The INDEPENDENT REVIEW

A Journal of Political Economy

Volume IV
Number 1
Summer 1999

isplay through 9/30/99

$7.50 CANADA $8.50
0 74470 90086 3 91

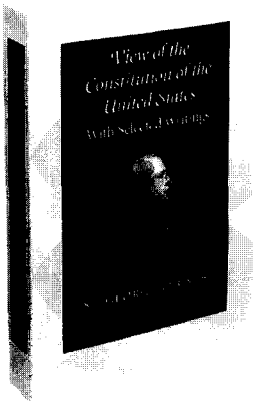
The INDEPENDENT INSTITUTE

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Classic Works for Readers Today

VIEW OF THE CONSTITUTION OF THE UNITED STATES
With Selected Writings

By St. George Tucker
Foreword by Clyde N. Wilson



As professor of law at the College of William and Mary, St. George Tucker in 1803 published ***View of the Constitution***—the first extended, systematic commentary on the United States Constitution after its ratification and later its amendment by the Bill of Rights. ***View*** was originally part of Tucker's "Americanized" or "republicanized" edition of the multivolume *Commentaries on the Laws of England by Sir William Blackstone*. Generations of American law students, lawyers, judges, and statesmen learned their Blackstone—and also their understanding of the Constitution—through Tucker. As Clyde N. Wilson notes, "Tucker is the exponent of Jeffersonian republicanism . . . in contrast to the commercial republicanism of New England that has since the Civil War been taken to be the only true form of American philosophy." In addition to the entirety of ***View***, the Liberty Fund volume includes seven other essays from Tucker's renowned edition of Blackstone. These include "On the Study of Law," "Of the Unwritten, or Common Law of England," and "Of the Several Forms of Government."

St. George Tucker (1752–1827) was an officer in the American Revolutionary Army, a professor of law, justice of the Supreme Court of Virginia, judge of the Federal District Court for Virginia by appointment of President James Madison, progenitor of a long line of jurists and scholars, and stepfather of John Randolph of Roanoke.

Clyde N. Wilson is Professor of History and Editor of *The Papers of John C. Calhoun* at the University of South Carolina.

478 + xxvi pages. Foreword, sources, note on the text, index.

Hardcover	$19.00	0-86597-200-1
Paperback	$10.00	0-86597-201-X

(Indiana residents add 5% sales tax)

Call 800-955-8335
Fax 317-579-6060
or write:

Liberty Fund Inc.

We pay UPS shipping on prepaid orders.

8335 Allison Pointe Trail, Suite #300, Dept. S17L, Indianapolis, IN 46250-1684
Explore Liberty Fund's catalogue on the World Wide Web at
www.libertyfund.org

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The INDEPENDENT REVIEW

A Journal of Political Economy

Volume IV
Number 1
Summer 1999

Articles

Liberty and Feminism
Richard A. Epstein 5

After Kyoto: A Global Scramble for Advantage
Bruce Yandle 19

Twenty Years after Humphrey-Hawkins:
An Assessment of Fiscal Policy
Jody Lipford 41

The Ways of John Gray: A Libertarian Commentary
Daniel B. Klein 63

Doomsday Every Day:
Sustainable Economics, Sustainable Tyranny
Jacqueline R. Kasun 91

Review Essays

On Treating Like Cases Alike
Anthony de Jasay 107

Race Policy in Three American Cities
Lino A. Graglia 119

Book Reviews

Desperate Deception: British Covert Operations in the United States, 1939–1944
By Thomas E. Mahl — *Justus D. Doenecke* 133

East and West: China, Power, and the Future of Asia
By Christopher Patten — *Christopher Lingle* 137

The Origins and Demise of South African Apartheid: A Public Choice Analysis
By Anton D. Lowenberg and William H. Kaempfer
Walter E. Williams 140

Overcoming Welfare: Expecting More from the Poor and from Ourselves
By James L. Payne — *Stephen T. Ziliak* 144

FRONT COVER:
Liberty Leading the People
by Eugene Delacroix
(see article on p. 5)

The INDEPENDENT INSTITUTE

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Book Reviews

Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776–1970
By Gregory S. Alexander — ***Todd J. Zywicki*** — **147**

Etceteras...

Escaping Leviathan?
Robert Higgs — **153**

The cover image of the painting *Liberty Leading the People* by Eugene Delacroix, is used under license from CORBIS/Archivo Iconographico, S.A.

Copyright © 1999, The Independent Institute. All rights reserved. *The Independent Review* (ISSN 1086-1653) is published quarterly (March, June, September, and December) by The Independent Institute, 100 Swan Way, Oakland, California 94621-1428. Phone: 510-632-1366. FAX: 568-6040. Website: www. independent.org. Application to mail at Second-class postage rates is pending at Oakland, CA, and at additional mailing offices. Republication of articles and reviews may not be made without written permission of the publisher. Individual subscriptions are available for $27.95/year and $52.95/two-year. Institutional subscriptions are available for $83.95/year and $158.95/two-year. Foreign orders add $28.00/year. Single copy rates: individuals $7.50 ($8.50 Canada), institutions $24.00 ($27.00 Canada). Correspondence regarding subscriptions, procuring back issues, editorial, advertising, and changes of address should be sent to the above address or e-mailed to: review@independent.org. Information for authors wishing to submit articles is on p. 4 of this issue. The views expressed by authors of the articles are their own and are not attributable to the editors, advisors, or The Independent Institute.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Publisher	*David J. Theroux*
Editor	*Robert Higgs*
Managing Editor	*Charles E. Cowens*
Marketing Director	*Harry L. Helms*
Assistant Editors	*Carl P. Close* *Alexander T. Tabarrok*
Copy Editor	*Suzanne Schafer*
Associate Editors	*Donald J. Boudreaux*, Foundation for Economic Education *Roger W. Garrison*, Auburn University *Ralph Raico*, State University of New York, Buffalo *Andrew R. Rutten*, Liberty Fund
Contributing Editors	*Lee J. Alston*, University of Illinois *Randy E. Barnett*, Boston University *Herman Belz*, University of Maryland *Bruce L. Benson*, Florida State University *James W. Ely, Jr.*, Vanderbilt University *Ronald Hamowy*, University of Alberta *Timur Kuran*, University of Southern California *Richard Langlois*, University of Connecticut *Gary D. Libecap*, University of Arizona *Gene Smiley*, Marquette University *Charlotte Twight*, Boise State University
Board of Advisors	*Barton J. Bernstein*, Stanford University *James M. Buchanan*, George Mason University *Robert Conquest*, Hoover Institution *Robert W. Crandall*, Brookings Institution *Stanley Engerman*, University of Rochester *Richard A. Epstein*, University of Chicago *Lloyd C. Gardner*, Rutgers University *Nathan Glazer*, Harvard University *Irving Louis Horowitz*, Rutgers University *Deirdre N. McCloskey*, University of Iowa *Geoffrey P. Miller*, New York University *Karl-Dieter Opp*, University of Leipzig *Nicholas Rescher*, University of Pittsburgh *Nathan Rosenberg*, Stanford University *Charles K. Rowley*, George Mason University *Bruce M. Russett*, Yale University *Pascal Salin*, University of Paris *Anna J. Schwartz*, National Bureau of Economic Research *Ulrich Witt*, Max Planck Institute *Bruce Yandle*, Clemson University *Leland B. Yeager*, Auburn University

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Author Information

The INDEPENDENT REVIEW (TIR) is published four times annually by The Independent Institute, a nonprofit, nonpartisan, scholarly research and educational organization that sponsors studies of the political economy of critical public issues. The editors invite submission of articles that deal with important issues in political economy. Authors may adopt the approaches of economics or other social sciences, history, law, or political philosophy. Both positive and normative analyses will be considered. Because *TIR* seeks a broad audience, papers should be interesting and comprehensible beyond narrow disciplinary bounds.

Manuscripts of articles for *TIR* should not exceed 10,000 words and should be submitted in triplicate, typed double-spaced with ample margins, with the author's name, address, and phone number on a separate title page only. An abstract of no more than 150 words should be included.

Accepted manuscripts must conform to *TIR's* style requirements, which are guided by *The Chicago Manual of Style* (14th Edition) and *Merriam-Webster's Collegiate Dictionary* (10th Edition). Citations should be in the author-date format, with full bibliographic information in a reference list, and substantive notes prepared as numbered footnotes. Quotations of more than 100 words should be indented from the left and preceded and followed by an extra line of space. A detailed editorial style sheet will be sent on request.

Authors should be prepared to supply papers as an e-mail attachment or on a 3.5-inch computer disk in a recent version of Microsoft Word or WordPerfect for Macintosh or DOS/Windows.

Unsolicited manuscripts must include a self-addressed, stamped envelope, with enough postage to ensure return. Submissions should be addressed to the journal Editor:

Dr. Robert Higgs
Senior Fellow, The Independent Institute
714 Laurel Street, Edmonds WA 98020, U.S.A.
Telephone or Fax: 425-774-0792
E-mail: rhiggs@independent.org.

Other Correspondence

Correspondence regarding subscriptions, purchasing back issues, changes of address, advertising and marketing matters should be directed to:

The INDEPENDENT REVIEW
100 Swan Way, Oakland, CA 94621-1428 U.S.A.
Telephone 510-632-1366, Fax 510-568-6040
E-mail: review@independent.org

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Liberty and Feminism

RICHARD A. EPSTEIN

What is the relationship between the status of women and the cause of liberty in modern times? The very tone of the question may suggest the anachronistic nature of this article. After all, the major battles over the status of women in the United States were fought long ago. They were, as it is sometimes difficult to remember, battles over civil capacity (for example, during the nineteenth century, the ability of married women to make contracts in their own right, to give evidence, to serve on juries) and over political capacity (for example, during the early twentieth century, the right of women to vote in political elections and to stand for office).

At the time, the resistance to these simple and self-evident claims was so great that in retrospect it is hard to fathom the political turmoil generated by such modest reforms. The strife was at least as great as the present-day contention over civil rights and affirmative action. Of course, the resolution of the major questions at issue by 1920 did not put an end to debates over the role and place of women in society. In this article I hope to give some sense of how the debate has progressed, and to indicate why the very arguments that rightly led to the legal reforms affecting the status of women during the nineteenth century militate against the demands for reform from the late-twentieth-century feminist movement. In stating this position, I do not mean to position myself in the vanguard of reaction. On the contrary, I believe that the progressive ideals of the nineteenth century remain just as progressive today.

The Basic Intellectual Framework

My political orientation is libertarian and laissez-faire, and the philosophical approaches I use to support that position are both utilitarian and consequentialist. These declarations require some qualification. In characterizing my position as

Richard A. Epstein is the James Parker Hall Distinguished Service Professor of Law at the University of Chicago.

The Independent Review, v.IV, n.1, Summer 1999, ISSN 1086-1653, Copyright © 1999, pp. 5–17

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

libertarian and laissez-faire, I do not mean to embrace the smallest-government version of either philosophy. I consider indefensible the libertarian position that categorically excludes state provision of infrastructure and other public goods and condemns the use of the eminent domain power. The first task of government may well be to control the use of force and fraud, but the provision of public goods such as roads and courts requires the use of public power to assemble the lands and to insure open access. Taxation therefore becomes the preferred means for collecting revenue. That revenue, if spent ideally, would yield benefits to each person at least equal to the taxes paid. The eminent domain power could then be used to assemble parcels of land for common purposes in situations, such as highway construction, where individual owners have holdout positions that could block a project that serves the common good.

This reference to the common good suggests the utilitarian foundations of the system. I do not conceive of utility as a detached entity or ideal that deserves respect in and of itself. Utility does not hover above the crowd and eliminate the need to see the effects that social policies and the creation of legal rights and duties have on various individuals in society. On the contrary, my account of the common good is intensely individual. It seeks to recognize that any government scheme that limits or controls individual rights should work for the benefit of all people so limited. The common good is one in which all individuals share as individuals. It is not one in which the majority controls the fates of the political minority by political fiat. The key task of political institutions and political theory is to identify and secure rights that work to this common advantage. It is to allow the majority to govern the state but not to trample the minority.

Working out the issues set by this agenda can be difficult. The takings law is exceedingly complex even with respect to the condemnation of particular parcels of land. It becomes even more complex when one considers the state regulation of land use, intellectual property, and the various markets for labor and commodities. For the moment, however, we can put these complexities to one side, for they have little to do with the battles over civil and political status that dominated the nineteenth century. The issues of civil and political capacity concern the ability of individuals to enter into ordinary business and social transactions and to participate in the general political life of the nation. They are the sorts of rights that can be guaranteed to all individuals even if the state does not adhere to any single sound principle of taxation and regulation.

The basic point is that the ordinary definition of liberty gives one not only the capacity to move about freely but also the capacity to better oneself through voluntary transactions. The logic of those transactions is that of mutual gain through mutual consent. We can agree that individuals have complex visions of themselves and of what actions or states of affairs serve their self-interest. Still, all can improve their lot through exchange by surrendering what they value less for what they value more. How could one defend a system that excludes any portion of the population

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

from these advantages? To be sure, in any particular case someone might be relieved by the exclusion from the economic arena of those perceived as competitors rather than trading partners. But if we consider the entrance of women into the marketplace (or indeed the entrance of any other group previously subjected to systematic exclusion), the overall balance of convenience tilts sharply in favor of free entry. New entrants are not merely potential competitors; they are also potential coworkers, suppliers, customers, and consultants. When they assume those roles, the new entrants enhance the vitality of the social system as a whole.

Exclusions in this situation operate as an internal barrier against free trade, with consequences no better (and arguably worse) than those arising from the formal exclusion of foreign goods and labor via taxes, tariffs, quantitative restrictions, quotas, and the like. The necessary consequence of the exclusion is that gains from trade are blocked by the artificial barrier, leaving the sum of production possibilities reduced with no evident distributional advantages to offset that social loss. Moreover, the classical prohibitions on women's contracting and women's suffrage gave rise to suspicion, distrust, and regret that could have easily been eliminated by removing the barriers to entry that everywhere frustrated the operation of competitive markets.

One reason why the nineteenth-century case for women's rights was (and is) so strong is that it dovetails neatly into any and all theories that recognize the limits as well as the uses of markets. For example, the arguments for and against an antitrust law that limits horizontal price-fixing or mergers scarcely touch upon this issue. One cannot conceive of a single argument in which the exclusion of women from the marketplace improves the resolution of such questions. Likewise for issues of taxation and regulation. Moreover, we can think of good reasons why systematic exclusion from the political process is likely to cause profound dislocations: what gain arises from a system in which all are bound by but only some participate in decision making? A dominant set of solutions leads all libertarians and utilitarians to support the progressive movements of an earlier age.

From Women's Liberation to Feminism

What has brought about today's split between the feminists and the free traders who march under the utilitarian and libertarian banners? The first point of separation pertains to the name of the movement. When the present wave of feminist activity burst on the scene during the 1960s, it was closely tied to the antiwar movement and the racial upheaval in the United States. For a time the movement gave recognition to its libertarian roots in its choice of name: women's liberation. The term hearkened back to the earlier crusades to remove the formal barriers to entry in both economic and political markets. But the name did not stick. It was always a bit too cute and refined for its purpose, and it projected a certain genteel quality inconsistent with the more hard-edged and programmatic tone of the modern movement.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The shift in nomenclature, however, did not take place in a vacuum, given the parallelism between race and sex in the civil rights movement. The nineteenth-century version of the civil rights movement in race relations followed much the same path as the nineteenth-century women's movement. In order to allow slaves to assume the status of free individuals, one had only to abolish the institution of slavery. In the formative period of the women's movement, during the middle of the nineteenth century, abolitionism was *not* a program to grant freed blacks full civil and political rights. As Andrew Kull has written, "There were a hundred arguments to be made against slavery before anyone would necessarily reach the idea—occupying, then as now, a relatively remote level of abstraction—that the law ought not to distinguish between persons on the basis of color" (1992, 27). Indeed, one argument advanced in favor of the abolition of slavery was that it did *not* entail going further to embrace the ideal of the "equal protection of the laws." Rather, the point was that whites could rid themselves of the moral stain of slavery and racial domination without having to grant blacks full political and civil equality. Once the blacks were free, they could still be excluded from the vote and from public office. Likewise with respect to the sexes. Objections to the capacity to contract were more easily overcome than uneasiness about giving (as only men could) women the vote, where the implications for the diffusion of political power were far greater.

Equality of Opportunity or Result

By the 1960s, all legal obstacles to women's economic and political participation having been overcome, the dispute became focused on the true nature of equality. Within the earlier system there was little tension between liberty and equality. To insist that all persons have full civil and political capacity made liberty and equality perfectly consistent, just as the denial of some people's liberty to participate necessarily infringed on their entitlements.

Indeed, one of the great advantages of the earlier system had been that, because it focused on what came to be called with some derision the "formal" aspects of the system, the legal program for correction of the status quo ante and for implementation of powerful reforms was straightforward. In every area of life, de jure discrimination is much easier to understand and to attack than de facto discrimination. For de jure discrimination, the sufficient legal cure is to remove the disabilities under which certain individuals previously labored, allowing them to participate on the same terms as others. Equality of social and economic outcomes was never a feature of the system; participation rights and successful outcomes had no necessary connection. There was only the weaker but more profound assumption that the older distributions of power and privilege could not easily survive a massive infusion of new players into the system. The whole enterprise thus comported with the Hayekian insight that new entry necessarily changes the patterns of behavior for incumbents by destabilizing their cozy institutional arrangements.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In the legal system, however, a fundamental transition is never as tidy as this philosophical program might make it appear. Questions arise as to whether the transition from the old to the new regime has been successful or whether some political friction, resistance, or hostility has limited the value of the newly created legal rights. When outcomes differed, some observers inferred that opportunities must actually have differed as well.

To me, it seems obvious that equal opportunities will always yield unequal results. Nor will the differences in outcome be random within or across groups. Instead, in general, they will reflect powerful systematic tendencies. With respect to employment and social role differentiation by sex, the conclusion seems clear: a system of equal rights to participate in business and political life will result in differences of occupational choice and political behavior, among other things, as actual experience has amply confirmed.

In many cases, however, the difference in outcomes has not been taken as a response to systematic differences in preferences between men and women. Rather, it has been viewed as proof that the system itself does not operate in the proper fashion. One explanation is that "society" (often spoken of as some detached entity) distorts people's thinking so that the preferences underlying their behavior are not "authentic," no matter how deeply held. Instead, those preferences spring from acculturation and upbringing, which themselves operate improperly. To the psychological concerns about distorted preference formation some critics have added the usual suspects for market imperfections—asymmetrical information and improper discounting of future values—as well as unconscious discrimination, illicit stereotyping, unfortunate path dependence, ingrained cognitive biases, and of course glass ceilings—those things we can feel but cannot see.

As these notions gained currency the pressure mounted for aggressive regulatory action. In the United States, the first wave of so-called antidiscrimination regulation came in the mid-1960s with the Equal Pay Act of 1963 and the Civil Rights Act of 1964. To the latter the prohibition against sex discrimination was added not quite as a joke, but as a dubious stratagem by Southern senators determined to show the absurdity of prohibiting private discrimination on the basis of race.

The language in which these interferences with market behavior were couched, however, was the language of opportunity and capacity, not that of equality of result. Supporters of the new regulatory efforts presumed that so long as private employers could indulge their taste for discrimination—notice how the term "taste" serves to trivialize the importance of the manifested preference—then we would not really have a level playing field. (The implicit assumption seemed to be that all employer preferences operated in the same, undesirable direction.) Laws were therefore required to make sure that each firm offered the same opportunities to all individuals.

The prohibition against discrimination by sex makes some sense in the public sphere—the state should not prohibit women from competing, nor should it subject

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

them to differential taxes or other burdens—but now it was carried over to private parties without any regard for the traditional public–private distinction in the law. No longer would the obligation to provide equal opportunity be fulfilled by the removal of state obstacles to participation in markets. Now it extended to employers, landlords, and others, who would be required to operate essentially as if they were governmental entities or public utilities, even though they do not possess any monopoly power in labor markets.

Why this transformation? The answer has much to do with the perennial tension between equality of opportunity and equality of result. The former ideal is relatively uncontroversial as an abstract proposition. And, notwithstanding the derision heaped on a concern for mere "formal" equality, that conception helped fuel the most welcome nineteenth-century reforms. But the relationship between equality of results and equality of opportunity has always been problematic. Can we have confidence that the opportunities are equal when the results turn out to be quite different in terms of, for example, overall wage levels, occupational distributions, and career paths?

The optimistic view of the early civil rights movement was that we would never have to face headon the implications of the choice between these two standards of equality. Rather, because individuals were basically the same in their capabilities and interests, the removal of barriers to opportunities would quickly translate into an equalization of outcomes across the characteristics over which discrimination was forbidden, including sex. The optimism on that front proved to be misplaced in the case of both race and sex discrimination. Equality of opportunity did not translate into identical results in occupational choices or wage levels. Why not? And what, if anything, should be done about the disparities?

The initial approach was to treat the matter as a question of evidence. In the prevailing conception, to discriminate is to treat differently two individuals, who are alike in critical respects because of some irrelevant consideration. To the extent that one expects (as I do not) that the elimination of irrelevant considerations leads to similar forms of behavior, then disparate choices and disparate degrees of success call at the very least for an explanation. So the early statutes made it appear that although the ultimate concern was the *intent* to engage in disparate treatment, such intent could be inferred from the observed differences in outcome.[1] Originally the inference was relatively weak, and in principle the charge could be dissipated if an employer could show that his practices did not involve any form of prohibited discrimination. Stated otherwise, the evidence as to actual practices could be used to overcome the inference from differential results.

1. See, for example, *McDonnell Douglas v. Green,* 411 U.S. 792 (1973), 804: "Statistics as to [the employer's] employment policy and practice may be helpful to a determination of whether [his] refusal to rehire [a dismissed employee] in this case conformed to a general pattern of discrimination against blacks." A similar logic has been applied in cases of alleged sex discrimination.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

That equilibrium, however, was delicate, and with time the balance changed. The evidence about intention was slippery and, besides, it is commonly believed that people act on the strength of various stereotypes and subconscious preconceptions, some of which are said to be so ingrained that they continue to operate even after they are called to the attention of those who labor under them. So what is needed is a bright light to reveal the hidden discrimination, and that revelation can be achieved only by treating the outcomes as dispositive of the discrimination question, wholly without regard to any direct evidence of intent to discriminate. The movement from treatment to impact defines one of the major aspects of the modern intellectual feminist movement.

Different Endowments, Different Behaviors

Recall again the premise of the argument: in equilibrium, similar distributions should exist for men and women over all relevant dimensions of employment. But why should we make that assumption? The issue here is not a moral question, the tacit implication being that those who deny the argument are misguided in their perceptions of how the world ought to be. Rather, the issue is a predictive question: do women and men in the aggregate choose similar career paths? The answer has to be no. I would be amazed if any voluntary sorting mechanism, such as the one operative in a market economy, ever produced such a result for ***any*** two population groups, let alone two that differ in some major and visible way, such as by sex.

To proceed with the argument, assume that both men and women seek to maximize their utility by finding the personal and occupational path that best suits their tastes and other natural endowments. The assumption here is that individual self-interest (suitably modified to take into account family and friends) drives and explains the behavior of individuals of both sexes. But the common commitment to self-interest, suitably defined, does not lead them to behave in the same way. The behavioral differences stem, in part, from differences in the endowments. These differences are manifestly physical, but also in many ways psychological. The physical differences seem too obvious to dispute. Nor can they be overcome by changes in diet or exercise; the biology matters too much for such social responses to neutralize the evident differences. Moreover, why would we suppose that the psychological makeup of men and women is identical when their physical differences are manifest?

Of course, all men are not identical, nor are all women identical in these characteristics. I mean to say only that their overall distributions differ in predictable ways along many dimensions. Within each sex, individuals differ widely, and the distributions often differ by sex. Women have a longer life expectancy than men, but not all women outlive all men. Men are taller than women on average, but some men are shorter than most women. In both cases, the differences are likely to be most pronounced at the extreme tails of the distributions. So it goes for any trait on which it is

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

possible to array individuals, both within and across sex groups. But for present purposes the group differences, not the individual differences within groups, are decisive.

We should not expect any specific sex-linked difference in endowment to manifest itself in only a single dimension. Suppose, for example, that men are physically stronger than women. It would be odd if, notwithstanding their relative weakness, women were physically more aggressive than men. How would their interest be served by pursuing a course of action that exposed them to greater peril than men? There is no survival value in a mismatch of physical and psychological traits. Rather, the sensible hypothesis is that evolution favors the emergence of personality traits that are organized and developed to complement physical traits in an integrated whole. Of course social influences also play a role. But socialization should reinforce the basic evolutionary tendencies. It is not in the interest of parents to guide their own children along the path to self-destruction. One may question the strength of the correspondences, but surely they are not nil. With differences across different dimensions thus reinforcing each other, we should expect to see fairly systematic differences in the *aggregate* data, even though both groups contain certain notable exceptions. And so long as the largest payoffs go to individuals at one or both tails, we should expect that the few cases at the extremes will exert a disproprtionate effect on the aggregate data, whether they pertain to influence or wealth.

That said, we should not neglect the middle of the distribution, either. With respect to the integration of home and work life, it seems indisputable that women, as a group, have to (and want to) devote a greater portion of their resources to childbirth and child rearing than men do. Pregnancy and nursing, of course, lie exclusively in the female domain. Although it is possible to substitute technology for parental care, such substitutions typically do not equalize the amount of child-care time given by each parent. The psychological dispositions should on average match the capacity to provide care, so that women would have a greater desire (or tolerance) for this activity than men do. Within families, that differential does not imply that women do all the child rearing and men none. But it does suggest that if couples optimize in making their trade-offs at the margin, women will do more child rearing than men, given the women's tendency toward a greater fondness and ability for that activity. The egalitarian marriage therefore faces a systematic obstacle in that by demanding equal child care by husband and wife, it reduces the total "production" from marriage, which in turn reduces the gains from entering into that relationship. It is no accident that many people use the word "house-husband" with a tinge of bemused disdain.

The effects of differential commitment are not confined to the division of responsibility in raising young children. It influences other occupational and educational choices that complement and depend on family choices. Women often leave the paid labor force or reduce their workloads there during the years that their children are young. There is no reason to suppose that their husbands have ordered them to do so. The more plausible explanation is that desires and functions align, as noted earlier, so that relative to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

men, women have a greater desire to remain at home for extended periods, even at the cost of some occupational and career advancement. In my view, that difference in career choices is voluntary in most cases. Indeed, it is part-time work to make ends meet that many women regard as the distraction when they have young children at home. Most women who don't work full time don't want to work full time.

Once such a choice has been made, it influences the patterns of investments that people make in the workplace and in training for work. There arises a differential willingness to take jobs with high-risk characteristics (especially over the dimension of time). That in turn leads more women than men to work on a piecework basis, with stable income, so that the residual risk bearers are disproportionately men. Over time this difference influences the earnings levels by sex, the nature of the professions into which women and men go, and, more critically, the roles they occupy within those professions. Even if all people were the same in every dimension but one, we would see major differentiation in career paths and outcomes arising from the principle of comparative advantage. As women gravitate toward flexible hours, men move more often into jobs that require long hours and extended travel. As men gravitate toward professions that require great physical strength, women gravitate toward other professions, including counseling and administration. If the differences express themselves across multiple dimensions (including, as I have argued elsewhere [Epstein 1990, 1992, 1993], the taste for risk), then we should see profound differences in occupational choices and career paths that will not abate even as women enter the workforce in ever greater numbers.

Victor Fuchs's informative 1988 study, *Women's Quest for Economic Equality,* makes the basic point. To be sure, large numbers of women have entered the professions, most notably law and medicine, in recent years. But the divergent career paths of men and women become most striking when one looks at the organization of subspecialties.[2] There are far more women in family law than in contingent-fee tort litigation; far more in pediatrics or obstetrics and gynecology than in neurosurgery or orthopedic surgery. Perhaps some part of these differentials could be explained by sex discrimination within the various specialties, but if so, such an explanation should be made by presenting proof of specific acts and policies, not merely by making assumptions based on the numbers. In any event, it hardly follows that all forms of occupational differences can be explained by (improper or proper) behavior on the demand side. The selection effect works on the supply side as well. In choosing their career paths, women attach different weights to work and family than men do, and they take into account the differences in physiology and psychology between the sexes noted earlier. In this view, there is no iron social law that designates certain positions as male

2. Fuchs (1988, chap. 3) also notes that the gap in self-employed income is as great as in employee income, and that differences between the sexes in tips and commissions track the differences in wages. Discrimination by employers cannot explain these strong correlations.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and others as female. But differential pressures work at every stage of life in the choice of professions and of the roles played within the professions.

Private and Collective Preferences

The marketplace is only one arena. Public opinion is another. Nowadays, social pressures tend to work against the traditional divisions of labor. Commonly, women declare, and men agree, that greater female participation in certain professions and occupations would count as an unquestioned social good. So at the social choice level, government programs pushing in that direction receive widespread support: hence the carrot of affirmative action programs, many of which go beyond what the law requires, and the stick of antidiscrimination laws, many of which are enforced by parties too eager to infer discrimination when none exists.

But matters operate differently at the individual level. The same woman who thinks the major investment banks should have more female partners makes a personal decision that she does not want to put in the hours needed to reach that goal. She may want to stay at home more with her children, or just hate travel; she may dislike the grind and the constant confrontation of high-level negotiations. She may resist any suggestion that stereotypes are at work in this regard. Hers is just an individual judgment about herself; self-consciously, it is not one about the position of women in general, on which she takes the opposite view.

But careful psychological calibration hardly matters for these purposes. The operative question in all such cases is how often that same intellectual and emotional process leads to the same results. If most women go through the same process of thought and arrive at the same conclusion, then the tyranny of small decisions is at work. The landscape of family and occupational choices reflects not the big-picture views on equality of the sexes but the composite of small-picture views of what is best for me and my family. Hence, we have a quasi-public-choice explanation for the disconnect between political attitudes and personal behavior that does not require us to assume the irrationality or instability of preferences. Voting in accordance with their general preferences, people can easily support laws that rest on the presumption that any imbalances in labor markets are produced by social forces of discrimination. So the politics of the nation moves to the left, for women more than for men (Lott and Kenny 1998). But actual practices turn out to be more conservative than the rhetoric, because the sum of individual ground-level choices leads to behaviors that reinforce occupational and wage differences rather than undercut them. The long-term equilibrium is thus in tension. The sum of the private decisions will be treated as compelling evidence of discrimination that requires strong government remedies. But practices will prove resistant to such legal remedies because the dominant element consists of choices made by employees, not choices made by firms, as commonly supposed.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Why are women's politics systematically further to the left than men's, and becoming more so? At first glance, one suspects that the opposite should be the case. As women come to receive as much (or more) formal education as men, and as women enter the paid labor force in large numbers, their experiences should converge with those of men, and that convergence of experience should bring about a convergence of political views. But surely the opposite has happened. Why? Because when women enter the paid labor force their experiences are often *not* the same as men's, and that difference prompts different responses to what they observe.

Take the hottest issue of the day: sexual harassment. Americans spend as much time today trying to figure out the optimal rules of conduct with regard to sexual harassment as Americans of the late nineteenth century spent dealing with the far more serious dangers posed by industrial accidents—the loss of life or limb in the workplace. Yet the risks now seem largely to run in one direction. In principle, quid pro quo harassment (which, wholly apart from statutory prohibitions, could not survive under contract in the modern workplace) might take place with women as the aggressors and men as the victims. And in some cases it surely does. Yet, overwhelmingly, the publicized harassments run in the opposite direction. Similarly, the legal complaints regarding a hostile workplace environment are virtually all brought by women against men, or, more accurately, against corporate employers held accountable for the sins of male supervisors and coworkers.

Why not allow such interrelationships to be governed by the employment contract, which could stipulate the procedures and penalties for various forms of violations? Because the political forces that call discrimination in general a social problem will not relent with respect to practices that, if anything, look more like personal aggression than a refusal to deal for reasons of sex. Forces of political economy press in the same direction. The established women in the workforce may like the anti-harassment rules and benefit from the protection they afford. The women who are willing to take the risks of harassment for the gains of employment are not allowed to compete by agreeing to work on different terms.

Yet who has the political influence? Surely it is those who belong to powerful organized groups. Perhaps we have here a clear conflict of interest between women belonging to different groups, similar to the conflicts that often divide men. Or perhaps other forces are at work as well to reinforce women's left-leaning political alignment. Women may easily identify with the lack of power and believe that government intervention is needed to offset the advantage that men possess. But even that factor does not explain why on all sorts of other issues women as a group favor higher levels of political intervention, usually to offset differences in wealth or advantages. Part of the explanation may stem from women's generally greater (perhaps for biological reasons) aversion to risk. In their private lives, women are more likely than men to believe that cooperation works better than competition, so why not in government as well?

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Surely no single explanation can account for all the political differences between men and women, but a number of particular differences may reinforce each other.

The persistent differences between the sexes lead to both behavioral and attitudinal differences. The effects are not cabined into some tiny area of human life, but influence all our experiences and interactions. We must oppose the common view that equality of opportunity, rightly conceived, necessarily and properly brings about equality of results. More specifically, we should not try to tinker with the outcomes of markets by imposing the strong norm of equality of results, which we cannot and should not achieve, given the differences of preferences and abilities of men and women. The existing patterns are not driven by exploitation (which, like the ether of classical mechanics, becomes ever more difficult to detect). Rather, they are driven in the main by informed choices at the micro level. To legitimize outcomes, we must revert back to the older libertarian theories of justice, which Robert Nozick (1974) described as leading to a distrust of all pattern principles of justice. Rather than posit our knowledge of what the ends should be, we should let the process run as it will, taking care to see that no major impediments interfere with bargaining and career choice.

The nineteenth-century program that abolished formal legal impediments to entry was roughly consistent with that normative view, which is no surprise inasmuch as Nozick's own theory of justice—justice in acquisition, justice in transfer, and justice in rectification—corresponds closely with traditional theories of property, contract, and tort, of which he had little direct knowledge. Of course, in individual cases we should be alert to the risks of duress, misrepresentation, and incapacity that can skew contractual preferences in untoward ways. But these small perturbations, of immense complexity in litigation, do not matter much in understanding the broader patterns of society, for they operate in only a small fraction of cases, and even then in ways that are independent of the concerns about male–female differences in education, income, occupation, and career path. Having opened the way for unimpeded bargaining, we can conclude with confidence that outcome differences are a source of social strength and a sign of a free society. It is when we see the lockstep progression of men and women (or indeed of any groups, whether defined by race, religion, national origin, or other identifiers), that we should infer that government mischief has interfered with the interplay of autonomous choices through voluntary exchange and association—choices that remain critical for the preservation of a free society.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

References

Epstein, Richard A. 1990. The Varieties of Self-Interest. *Social Philosophy and Policy* 8: 102–20.

———. 1992. Gender is for Nouns. *DePaul Law Review* 41: 981–1005.

———. 1993. Some Reflections on the Gender Gap in Employment. *Georgetown Law Journal* 82: 75–88.

Fuchs, Victor. 1988. *Women's Quest for Economic Equality.* Cambridge, Mass.: Harvard University Press.

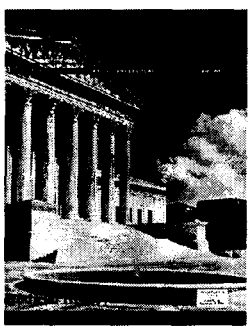
Kull, Andrew. 1992. *The Color-Blind Constitution.* Cambridge, Mass.: Harvard University Press.

Lott, John R., Jr., and Larry Kenny. 1998. How Dramatically Did Women's Suffrage Change the Size and Scope of Government? Manuscript.

Nozick, Robert. 1974. *Anarchy, State, and Utopia.* New York: Basic Books.

ORGANIZATION OF AMERICAN HISTORIANS

MAGAZINE OF HISTORY



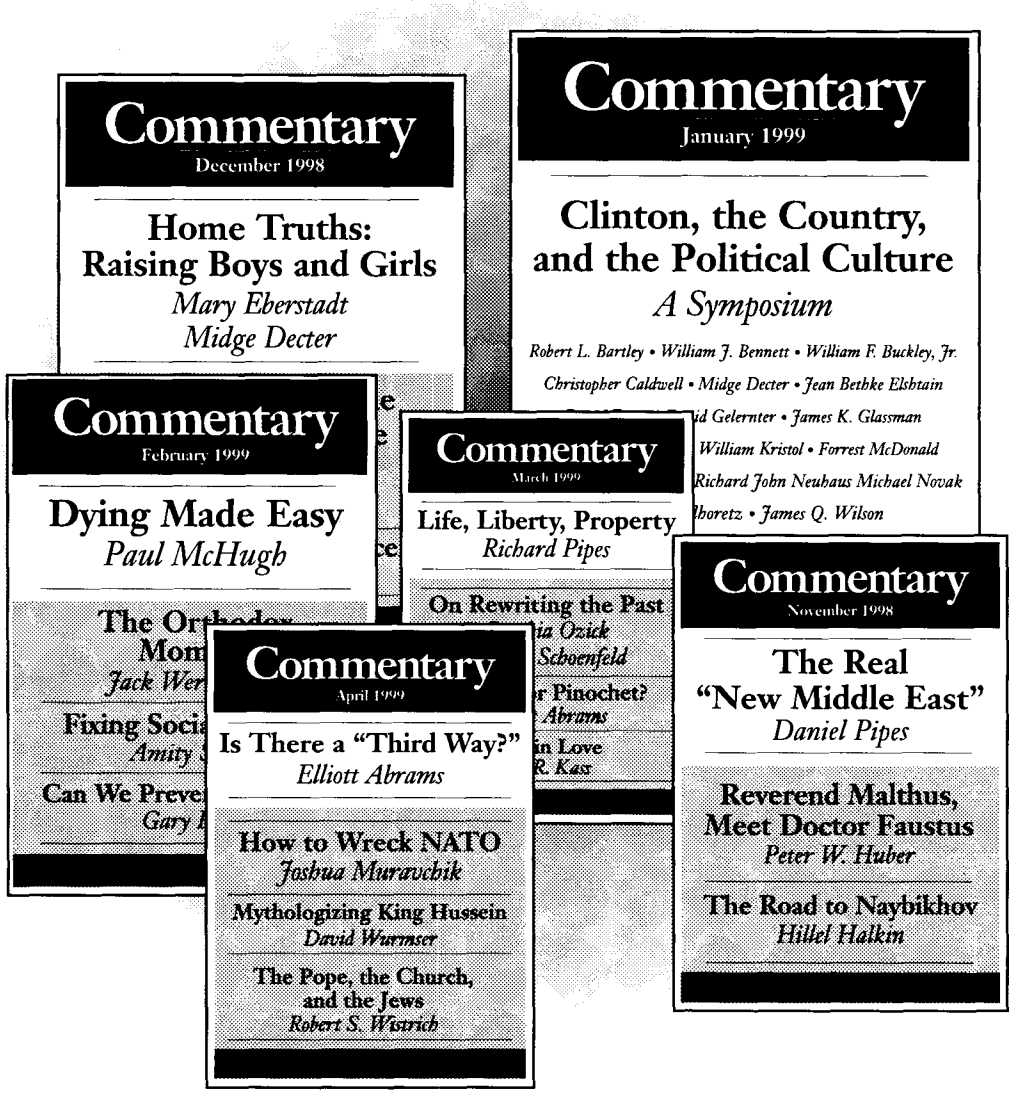
The ***OAH Magazine of History*** makes available the latest historical scholarship in a form for use in the classroom. Each quarterly issue of the ***Magazine*** focuses on one particular theme, with articles presenting the latest findings and interpretations on the topic, as well as lesson plans and reproducible classroom materials. It contains reviews of books, curriculum materials, films, textbooks, and software. The ***Magazine*** is a valuable resource not only for teachers, but is useful in other educational areas including community/junior colleges, historical society and museum educational programs, and for students of education and graduate students preparing to teach American history. Subscriptions ($25 nonmember, $20 member, $30 institution) and back issues ($7 each) are available for purchase.

Future issues include: Early Republic, Migrations, Gilded Age, Progressive Era, Great Depression, and the Industrial Revolution.

Contact OAH for information on subscribing or purchasing back issues:
112 N. Bryan Avenue
Bloomington, IN 47408-4199
812/855-7311 oah@oah.org FAX: 812/855-0696
Subscribe online at **www.indiana.edu/~oah**

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"Nothing like it."
—A.M. Rosenthal



Commentary

The best minds. The most important issues.

$45.00 for 12 issues • Subscribe today! • $79.00 for 24 issues

Call 1 800 829-6270

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

After Kyoto: A Global Scramble for Advantage

BRUCE YANDLE

The 1997 Kyoto Protocol is generally viewed as having set carbon emission reduction goals for the developed world for the purpose of avoiding global warming, a tragedy of the commons.[1] But instead of avoiding the plaguing free-rider problem that works in favor of tragedy, the protocol allows uncontrolled growth in carbon emissions from the developing world, which will more than offset reductions elsewhere. Strictly speaking, the Kyoto Protocol is not about avoiding a tragedy of the commons. It involves much more than that.

Apart from expectations that meeting the terms of the protocol will not reduce future emissions, the scientific basis for Kyoto's massive and costly undertaking is far from settled (Singer 1999). Competing models that seek to link human behavior to climate change yield mixed results, which is to say that temperature changes may be caused by solar activity, clouds, or ocean temperature changes. There is also contradictory evidence on temperature change itself. It is not a foregone conclusion that temperatures, though increasing in the last few years, are rising systematically. Nor is it clear that human activity contributes to the current temperature increases.

Putting the scientific questions to one side and viewing the protocol on its own terms, there is serious question whether it is primarily about carbon emission reductions and global warming or about something else. An analysis of the agreement and of the post-Kyoto strategizing suggests that control of global warming is largely symbolic, which does not gainsay its vital importance to environmental groups. The real effects of the protocol relate to cartelization and efforts by interest groups and

Bruce Yandle is Alumni Professor of Economics at Clemson University and a senior associate of PERC.

The Independent Review, v.IV, n.1, Summer 1999, ISSN 1086-1653, Copyright © 1999, pp. 19–40

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

countries to gain competitive advantage in a globally competitive world. Global warming may be just the right wrapping for a major rent-seeking package (Yandle 1998).

To support this assertion, or to refute the null hypothesis, it is necessary to (1) provide evidence from the agreement itself that cartelization is a real possibility and that differential effects across countries, industries, and firms offer significant incentives for political agents to raise rivals' costs; (2) show that the resource costs of meeting the terms of the protocol are large enough and the opportunities for gaining markets or protecting existing ones fruitful enough to justify the cost of cartelization; and (3) provide clear evidence that countries, firms, and industries are indeed behaving strategically in efforts to use Kyoto as a rent-seeking endeavor. To accomplish these three tasks, I first discuss the global commons problem and provide background information on the Kyoto agreement that shows differential effects across countries. I then survey research on the costs of Kyoto, showing that the resource costs and transfers involved are massive and identifying potential winners and losers in particular product and geographic markets. I provide anecdotal and statistical evidence regarding the behavior of energy firms, trade associations, and countries to demonstrate the crucial importance of Kyoto's environmental symbolism in achieving cartelization goals. Finally, I offer some thoughts on Kyoto and alternate policies.

The Global Commons and the Kyoto "Solution"

The Commons Problem

Most environmental problems begin with a commons, an unrationed resource that tends to be overexploited. Steps taken to ration activity on the commons are justified as being necessary to avoid the tragedy of the commons (Hardin 1968; Anderson and Leal 1991). Garrett Hardin and others remind us that property rights and other rationing institutions can emerge, converting a tragedy to triumph. But the Buchanan-Tullock analysis of political instruments chosen for accomplishing this feat warns us that rent-seeking actions taken to define regulatory strategies can earn a high private return (Buchanan and Tullock 1975). In their story, special interest groups and the politicians who "solve" the commons problem can share monopoly rents if the appropriate regulatory remedy is applied.

Appealing to the commons problem when considering global warming is both logical and politically useful. Although its scarcity is still not well established, the upper atmosphere is clearly an unrationed resource. Any steps taken to alter this nonproperty arrangement will require global political action. Yet the commons imperative is by its nature a centralizing force at any level of human activity. Decentralized spheres of private action and exclusive private rights—what might be termed

1. For a lay summary of the protocol, see Sparber and O'Rourke 1998. For the complete text, see United Nations Framework Convention on Climate Change 1998.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

individual or local sovereignty—are reduced as collective action expands. In addition, as the scope of action expands, special-interest groups seek to have wealth redistributed in favorable ways. Of course, successful steps taken to avoid real tragedies can generate social gains by precluding the destruction of valuable assets. But as institutions form, there are trade-offs to consider. Rent-seeking costs may be larger or smaller than the gains from avoiding a tragedy of the commons.

As the dimensions of the commons to be managed expand beyond the community to include the state, then the region, the nation, and finally the world, the diverse rules that govern heterogeneous communities give way to ever more homogeneous regulations that can restrict competition in the name of environmental protection. Customs, traditions, and institutions such as the common law tend to be pushed to one side as statutes and treaties form a more extensive social order. Local sovereignty is compromised as collective decision-making is delegated to state, national, and then international bodies. And the potential rents to be earned by competing countries, far-flung global firms, and accommodating politicians achieve significant value, but not without cost.

Another trade-off accompanies the transfer of sovereignty from smaller to larger communities (Yandle 1997, 29–30; Ostrom and Schlager 1996, 46). When remotely determined homogeneous rules are imposed on diverse communities, some efficiencies in resource use, where more readily measured costs are weighed against locally perceived benefits, are exchanged for the avoidance of more remote costs, not easily observed at local levels. As control becomes more remotely determined, the efficiency losses tend to increase. It is obviously important that the marginal benefits from avoiding global costs exceed the ever-increasing marginal costs of such local efficiency losses.

The Kyoto Protocol is a case in point. The December 1997 agreement to reduce greenhouse gases, endorsed by representatives from 174 nations, joins an estimated 180 other environmental treaties on deposit with the UN Secretary General (Committee to Preserve American Security and Sovereignty 1998). Kyoto and the other treaties differ fundamentally from national decisions to legislate in the interest of cleaner air or water. First, the protocol establishes a relatively homogeneous rule—greenhouse gas reductions based on 1990 emissions—for scores of heterogeneous communities. Next, constitutional constraints and domestic rules of law that normally protect property rights and sharpen the spur of competitive behavior in domestic economies can be relaxed in the name of avoiding global warming. Coordinated output restrictions, ostensibly for environmental protection, are viewed benevolently.

How the Protocol Evolved

The Kyoto Protocol is an evolved agreement rooted in the notion that developed countries, which are necessarily large energy users and greenhouse gas producers, should bear the brunt of reducing emissions in the name of avoiding costly climatic changes.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

This idea, discussed formally at Toronto in June 1988 and considered by the U.S. Congress in 1989 in a proposed bill, the Global Warming Prevention Act, was fundamental to commitments reached in 1992, when representatives of 160 nations attended the Rio de Janeiro Conference on Environment and Development (Manne and Richels 1991, 88).

Efforts to contain greenhouse emissions were strengthened at the 1995 Conference of Parties to the Rio de Janeiro Agreement, yielding the Berlin mandate, which stressed the importance of gaining national commitments to greenhouse gas reductions. Then, an ad hoc group that met in Geneva in 1995 and again in 1996 called for binding mandates for thirty-eight developed countries known as Annex I, including primarily the members of the Organization for Economic Cooperation and Development (OECD) and eastern European states. Cooperation and emission reporting were expected of developing countries, and a stronger commitment was expected from eastern European states in transition, but no quantifiable emission reduction commitments were called for. A follow-up meeting for resolving issues left on the Kyoto table took place in Buenos Aires in November 1998.

The Kyoto Protocol, endorsed in Kyoto on December 11, 1997, now awaits ratification by the U.S. Senate, which has indicated that it will not ratify the treaty until the developing world makes reduction commitments.[2] The protocol sets 1990-based emission reductions for greenhouse gases (primarily carbon dioxide) for the Annex I countries, to be achieved by the "commitment period," 2008–2012. At that time, emissions will be averaged across the designated years to determine compliance.

For the protocol to become binding, fifty-five countries must ratify it—which implies that seventeen non–Annex I countries must give their approval—and these ratifying countries must account for at least 55 percent of the desired emission reductions. In April 1998 the European Union members officially ratified and signed the Kyoto treaty, accepting an 8 percent reduction of carbon emissions over the next thirteen years (Leopold 1998). The United States, which had accepted a 7 percent reduction, still had not ratified the agreement, and the likelihood of its doing so was slight. In April, Japan, Australia, Brazil, Canada, Norway, and Monaco signed. Argentina and Pacific island nations had signed earlier.

As of June 1998, forty countries, representing 38.9 percent of the total pledged emission reductions, had officially committed themselves to the December 1997 protocol (List of Signatories 1998). At the November 1998 Buenos Aires meeting, Argentina and Kazakstan agreed to join the Annex I countries in cutting emissions (Fialka 1998), and the United Nations exerted pressure on African countries to join the list of volunteers (BBC News 1998).

2. A nonbinding resolution (S.R. 98) was passed in the Senate by a vote of 95 to 0 on July 25, 1997, requesting that the executive branch sign an agreement only if a commitment is made by developing countries to reduce emissions (Freedman 1997).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The United States was left holding the high trump card. By the terms of the protocol, the parties to the convention have until March 15, 1999, to make their commitments binding. Because it accounts for 36 percent of the industrialized nations' emissions and 23 percent of the world's, the United States alone can prevent the agreeing nations from reaching the 55 percent reduction in emissions required for the agreement to become binding. But whether the protocol is finally ratified or not, Kyoto-inspired restrictions are already in the works.

The Magnitude of the Task

How large is the Kyoto challenge? Consider the tons of emissions to be reduced. In 1990 the Annex I countries, with the United States leading, produced roughly 64 percent of all greenhouse gases, which then totaled 6 billion tons annually.[3] The developing countries, led by China, produced the remaining 36 percent. Forecasts of emissions for the year 2015 place total emissions at 8.45 billion tons, with the developing countries producing 52 percent of the total; the developed countries by then would be minority players. By the year 2100, 19.8 billion tons of greenhouse emissions are expected, with the developing world producing 66 percent of the total.

Data on projected atmospheric concentrations of carbon dioxide illustrate the Kyoto challenge in yet another way. In the absence of any intervention—what some call business as usual—concentrations will rise from 1990 levels of 353 parts per million (ppm) to 383.5 ppm by 2010 (Business Roundtable 1998). With full Kyoto compliance, which means that the developed countries achieve their reduction targets while the rest of the world—largely, China and India—is unconstrained, year 2010 concentrations are projected to reach 382.0 ppm, which is roughly 8 percent higher than 1990 concentrations. Comparison of projected year 2010 business-as-usual concentrations with full-Kyoto-compliance levels shows a 0.39 percent reduction in concentrations, an amount that would be undetectable.

Massive Costs and Differential Effects

The Kyoto agreement contains emission reduction targets for the thirty-eight Annex I countries that average about 5 percent. Table 1 shows the relevant data for country groups and individual countries. As indicated, commitments range from an 8 percent reduction for western European countries to an 8 percent increase for Australia. The table also shows the implied Kyoto emission target and the gap that results when the target level of emissions is subtracted from predicted uncontrolled year 2010 emissions. The gap amounts to a total reduction of 940 million metric tons of carbon.[4] Applying a cost per ton of $23 to $300 for removing these emis-

3. These data are from Antonelli and Schaefer (1997, 18) and are drawn from reports of the Intergovernmental Panel on Climate Change.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sions—the wide range of estimates found in various studies to be discussed later—one obtains a total cost that ranges from $230 billion to $3 trillion. These potentially massive amounts represent costs that some people will pay and revenues that other people will receive. For the terms of Kyoto to be met, the transactions must be completed by the years 2008–2012. The last column of the table shows the implied percentage reduction for each area. This indicates the relative burden. Two countries, Japan and the United States, stand out with respect to the burden to be borne. The differential effects are significant.

Table 1: World Total Carbon Emissions, Annex I Countries (millions of metric tons per year)

Region/ Country	1990 Emissions	2010 Emissions	Kyoto vs. 1990	Kyoto Target	Kyoto Gap	Gap to 1990
Japan	308	466	94%	290	176	–57.3%
United States	1,337	1,803	93%	1,243	560	–41.9%
Canada	137	182	94%	129	53	–33.8%
Western Europe	1,016	1,208	92%	935	273	–26.9%
Australia	100	127	108%	108	19	+19.0%
Former USSR	1,029	872	100%	1,029	(157)	NA
Eastern Europe	309	306	94%	290	16	–5.0%

Source: Business Roundtable 1998, 12.

Carbon Credit Trading and Cartel Opportunities

Provisions of the Kyoto agreement allow the trading of emission credits across the world. Though controversial and still embryonic, such trading figures into the cost estimates just mentioned. If an industrial firm in the United States, for example, could purchase emission reductions from sources here or in another country at a price less than its control cost, the purchase of those carbon credits could reduce total control costs. But for purchases to occur, there must be suppliers as well as an effective institutional infrastructure to accommodate the trading.

The data on tons of emissions to be reduced by country and region illustrate the challenge faced by the United States, which is responsible for 560 million metric tons of reductions. Assuming emission reduction trading were operational, the states of the former USSR and eastern Europe would offer a fertile market for the purchase of credits. But the total tons of emissions to be reduced by the United States is large when compared with the excess available to the former USSR and with total emission magnitudes elsewhere. Domestic trading, which would take place at higher

4. These data are taken from "The Kyoto Protocol: A Gap Analysis" (1998, 32), and were developed by Dr. Bert Bolin, a member of the Intergovernmental Panel on Climate Change.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

cost, could supplement a world market for emission credits if one should arise before the 2008–2012 deadline. But what if a group of countries could cartelize and exclude the United States?

Throughout the Kyoto negotiations, leaders from the European Union (EU) opposed credit trading as a substitute for taking action in each country. At the same time, the EU leadership favored an exclusive EU carbon-credit trading market, which the United States opposed. Finally, emission trading entered the agreement, and the EU achieved its goal: a trading cartel that allows the EU flexibility in setting reduction goals for member states but excludes the United States and Japan, the two countries with the most to gain by trading and the most to lose if the trading option is foreclosed.

Estimates of the Cost of Kyoto

Academic Studies

Academic economists have done substantial research on the economics of controlling greenhouse gases (Manne and Richels 1991; Nordhaus 1991; Pearce and Barbier 1991; Whaley and Wigle 1991; Jorgenson and Wilcoxen 1993; Kosobud et al. 1994; Larsen and Shah 1994; Sinclair 1994; Holtz-Eakin and Selden 1995; Carrato, Galeotti, and Gallo 1996; Chen 1997). Among the studies are estimates based on large national econometric models, reports focused on Europe, and several studies that examine the relative costs associated with different regulatory instruments including emission taxes and permit trading.

When reviewed together, the academic studies indicate that carbon emission reductions of the magnitude called for by the Kyoto Protocol cannot be obtained at low cost. For example, the Jorgenson-Wilcoxen (1993) study assumes that U.S. carbon emissions would be held to 1990 levels and—incorrectly, as it turns out—that a 14.4 percent reduction in year 2020 emissions would achieve 1990 levels. (More current data indicate that a reduction of at least 36 percent would be required.) The authors apply emission taxes as the control instrument. Even with an assumed reduction much lower than that required by Kyoto, the study indicates that coal would be taxed at $11.01 per ton, oil at $2.31 per barrel, and natural gas at $0.28 per thousand cubic feet. The resulting revenues would yield $26 billion annually to the federal government. The authors find that coal would sustain a 40 percent price increase and an associated 26 percent decline in production. They predict that the rate of GDP growth would decline by an amount that ranges from a small fraction of a percentage point to one percentage point, relative to baseline growth.

Making somewhat similar assumptions and again applying emission taxes as the control instrument, David Pearce and Edward Barbier (1991) examine the U.K. economy. They estimate that a 67 percent increase in taxes for coal, along with 40 percent for gas and 54 percent for oil, would be required to achieve 20 percent reduction

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of U.K. carbon emissions by 2005. Pearce and Barbier emphasize that unilateral action can accomplish very little. If there is an uncontrolled component of the world economy, domestic energy use and carbon emissions may fall, but importation of substitutes could lead to carbon emission replacement by exporting countries.

Allan Manne and Richard Richels (1991) come close to meeting some of the terms of Kyoto in their global analysis of the cost of achieving 20 percent reductions in emissions by the year 2030. They accurately assume that the industrialized world accepts the reduction goal and the developing world does not. Their estimates of GDP effects indicate that the United States would sustain rising GDP losses across the control period, hitting a net loss of 3 percent by the year 2030. Losses for the OECD countries are shown to be much lower, reaching 1 to 2 percent in 2030. Mexico and other oil-producing countries sustain even larger losses, and China has the largest losses of all, losing 10 percent of GDP in the last half of the twenty-first century. They show that the price of coal increases fourfold and, remarkably, that substitution effects cause the demand for oil to increase, not decrease. This study illustrates Europe's relative gain from the protocol and helps to explain China's adamant opposition to it.

Other academic studies offer similar findings. Most relevant for present purposes, the research tells us (1) that the potential cost of the Kyoto Protocol to the United States would be far greater, both in total and in relative terms, for the United States than for other industrialized countries; (2) that a number of major European countries, including the United Kingdom and Germany, have already made adjustments that lighten their load; (3) that producers of substitutes for coal have much to gain; and (4) that the costs and the effects of compliance would differ significantly across countries, depending on the nature of the control instruments and the permit markets.

Economic Studies by Consulting Firms, Government, and Trade Associations

As the details of the emerging Kyoto Protocol became more predictable, groups with the most to lose or to gain, government agencies, and consulting firms came forward with more focused studies of Kyoto's impact. In some cases, the findings help us to understand more about the stakes involved for special-interest groups. The government studies arrive at cost estimates that vary far more widely than those in either the academic research or the work of private consulting groups. The estimate by the President's Council of Economic Advisers, for example, indicates that achieving the carbon reductions required by the protocol would impose very low costs on the U.S. economy.

The consulting firm DRI/McGraw-Hill provided an economic impact study for the United Mine Workers/Bituminous Coal Association, itself an interesting alliance (Impact of Carbon Mitigation Strategies 1997). The study contains scenarios in which greenhouse gas emissions would be stabilized at 1990 levels and at 10 percent lower

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

levels by 2010. Instead of taxes, the study assumes government-issued marketable permits to be the control instrument. The report estimates that permit prices would range from $180 to $280 per ton of carbon across the control period if the goal were to maintain 1990-level emissions. Permit prices would be higher in the 10 percent reduction case. The permit prices reflect the incremental cost of reducing emissions by a ton of carbon. The study shows coal prices rising sevenfold, electricity prices about 100 percent, and retail gasoline prices 40 to 50 percent. Estimated employment losses reach 1.4 million jobs for the years 2000–2020, and GDP growth would be reduced by one percentage point at most as the economy adjusted to the constraints.

In a study commissioned by the American Petroleum Institute, WEFA assumes U.S. carbon emissions stabilize at 1990 levels by the year 2010 (National Impacts 1998). The study rejects the possibility of an intercountry permit market, owing to the lack of legal infrastructure, and assumes a U.S. permit market instead. The analysts then assume that uncontrolled emissions would be 27 percent above 1990 levels by 2010, and 46 percent above the target by 2020. To achieve the necessary reductions, carbon permit prices would have to rise across the control period from $100 per ton per year to $300.

According to WEFA, the emission reductions would lead to a 30–55 percent increase in consumer prices, with energy-intensive sectors sustaining shocks comparable to those associated with the Arab oil embargoes of the 1970s. Real GDP would fall 2.4 percent below baseline 2010 estimates, that loss alone amounting to $227 billion 1992 dollars. Cumulative GDP losses across the years from 2001 to 2020 would total $3.3 trillion, and employment decline would exceed 22.8 million workers by the year 2010.

With regard to international competitiveness and trade, the WEFA study notes:

> One key reason for the lower level of real GDP is reduced global competitiveness. Because the imposition of the carbon target and permit system is not borne equally by all countries . . . U.S. exports are relatively more expensive on the world market, while the prices of many imported products will fall. As a consequence, exports are lowered dramatically, while imports are increased substantially. (National Impacts 1998, 4–5)

The report notes that chemicals, paper, textiles and apparel, and computer and electronic parts production would be severely affected.

The U.S. Department of Energy has prepared a number of studies of Kyoto Protocol effects, with widely varying estimates of costs. The agency's first 1997 study (Office of Policy and International Affairs 1997) assumes a control target of achieving 1990 emission levels by 2010; it considers both a U.S. and an international market for tradable permits. In a strictly domestic market, permit prices would rise to $150 per ton of carbon emissions. With a world market, the price would be $40. Assuming a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

domestic control scenario, U.S. coal consumption falls by 50 percent by 2010, and the price triples. Total GDP losses across the period have a present value of $418 billion, and revenues from permits reach $400 billion by 2010.

In sharp contrast to this DOE study, a 1997 report prepared by the same agency's Office of Energy Efficiency and Renewable Energy, known as the "three labs" study (Interlaboratory Working Group 1997), indicates that Kyoto's costs would be inconsequential. This happy outcome is associated with the successful outcomes of yet-to-be-specified federal programs to create energy-efficient technologies and encourage switching from high- to low-carbon fuels. The report's authors do not estimate the costs of the federal programs or explain how those programs would accomplish the predicted feat in just thirteen years.

In a 1998 report, the DOE reversed itself again, indicating that gasoline prices would rise approximately 66 cents per gallon and electricity prices 86.4 percent above business-as-usual baseline prices (U.S. Department of Energy 1998). Unlike the "three labs" study but more in line with DOE's first 1997 study, this more recent analysis predicts that GDP in the year 2010 would be $397 billion lower than its baseline forecast.

Faced with conflicting evidence from the DOE on Kyoto's economic effects and with other major studies showing substantial costs, Congress was apparently confused. Along with other experts, Janet Yellen, chairwoman of the President's Council of Economic Advisers, gave testimony to Congress in March 1998, before the October 1998 DOE report was published (Yellen 1998). Yellen's analysis indicates that Kyoto will be practically costless to the U.S. economy.

To arrive at this optimistic conclusion, she makes a number of assumptions that implicitly expand the time span of her analysis far beyond the 2010–2012 compliance period. Specifically, she assumes that improved forestry practices and reforestation, which obviously take decades to complete, would cheaply offset carbon emissions and that U.S. firms and government agencies would participate in assisting developing countries in "clean economic development," thereby gaining emission credits. In addition, she assumes that U.S. carbon emitters would participate in a world market for trading emission credits, a process for which no institutional framework had been created at the time of her testimony. Beginning with a baseline estimate of $240 per ton for reducing carbon from emissions, Yellen applies the effects of her assumed cost savings and arrives at a final cost of $23 per ton for removing carbon.

Finally, one last study deserves comment. Ronald J. Sutherland, senior economist for the American Petroleum Institute, prepared an interesting analysis of Kyoto policy options that starts with a relatively simple econometric model for explaining carbon emissions in developed countries (Sutherland 1998). Accepting the agreement's binding time constraint, Sutherland shows that it would be practically impossible for the United States to achieve Kyoto's goals, especially if nuclear energy production were

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ultimately replaced by gas-fired turbines, as now predicted. He forecasts three important effects. First, clean nuclear fuel would be replaced with dirtier natural gas. Second, continued income growth would lead to a predictable increase in the demand for energy, and therefore to more carbon emissions. And third, the price increases necessary for achieving Kyoto goals, like those estimated by WEFA and the DOE, would simply not be accepted.

Using estimates of the price elasticity of demand from ten large-scale studies, Sutherland shows that gasoline prices would have to rise from $1.25 per gallon now to $4.23 per gallon in 2010 to meet Kyoto's U.S. goals. This increase, he believes, would be politically impossible to achieve. Creating an even greater challenge, post-2010 prices would have to rise continuously to offset increases in demand generated by rising incomes. Unlike the more optimistic findings of those who implicitly abandon Kyoto's time constraints, Sutherland demonstrates the hopelessness of relying on technical change, prices, and controls to reach Kyoto's U.S. goal for 2010.

Focusing on the studies that come closest to meeting the actual constraints imposed by Kyoto, we can deduce that the incremental cost of reducing emissions by a ton would range from $100 and $300. Given the number of tons to be cut, total reduction costs would amount to $1 trillion to $3 trillion. Coal obviously would be the hardest-hit industry. All fossil fuels would rise in price, but some, such as natural gas, would become relatively cheaper. In short, the resources to be transferred in credit markets would be massive, as would be the substitution effects across energy commodities and energy-intensive industries.

The Struggle for Advantage

My theory of Bootleggers and Baptists, a subset of the economic theory of regulation, calls attention to coalitions that seem to prevail when environmental and other social regulation is being formulated (Yandle 1983).[5] Although powerful interest groups still matter, this theory tells us that at least two interest groups must work in the same the direction. One group, the Bootleggers, look to regulation to enhance their market position or to limit competition. The other group, Baptists, adds a moral dimension to the regulatory cause that happens to solve the Bootleggers' problem. Traditionally, for example, both Baptists and Bootleggers have supported laws that limit the legal sale of alcoholic beverages.

In the post-Kyoto period, we should expect to find environmentalists playing the role of the Baptists. The theory suggests that we should find allies among the Bootlegger population—countries, industries, and firms that foresee a greener bottom line by supporting the "green" position. Within industries, some firms have specialized assets

5. The economic theory of regulation is associated with Stigler (1971) and Peltzman (1976). Posner (1974) added elements to it.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

or outputs favored by rules that raise the cost of competing assets and products. With the Kyoto agreement, countries such as the United Kingdom are positioned to exploit carbon reductions already made and to raise the costs of competing economies. Other countries can become low-cost suppliers of carbon reduction offsets. But unlike conventional regulatory arrangements that involve one national government regulating domestic industries, Kyoto presents us with the unusual situation of countries behaving like firms, strategically positioning themselves to benefit while gaining protection and credibility from international environmental groups that embrace Kyoto as a necessary part of their crusade.

Post-Kyoto Episodes

Consider the following anecdotal evidence. In January 1997, Enron Corporation, a major provider of low-carbon natural gas, announced that it was forming the Enron Renewable Energy Corporation in an effort to "take advantage of the growing interest in environmentally sound alternatives of power in the $250 billion U.S. electricity market" (Salisbury 1998b). The new division will develop nontraditional energy products, which suffer a competitive disadvantage in current energy markets. Recognizing this disadvantage, Tom White, Enron Renewable Energy CEO, supports President Clinton's $6.3 billion plan to fight global warming, which includes $3.6 billion in tax credits to spur the production and purchase of renewable energy and related technologies (Salisbury 1998b).

Of course, taxpayer subsidies can become habit-forming. On April 9, 1998, the National Corn Growers Association announced a major lobbying effort to prevent congressional efforts to eliminate the 5.4-cent-per-gallon subsidy to producers of corn-based ethanol (National Corn Growers Association 1998). The association's newsletter claimed that "ethanol is good for the economy, good for the environment, good for America," a theme endorsed in a speech by Mary Nichols, U.S. EPA Assistant Administrator for Air and Radiation, when she addressed the National Ethanol Conference in Des Moines, Iowa: "One area where I think we can do more together is the area of climate change and global warming" (Stark 1998). The celebration of ethanol did not mention that ethanol production may use more energy than it provides or that the federal government's $600 million annual ethanol subsidy assisted the production of beverage as well as industrial alcohol (Bandow 1997). On May 6, 1998, Republican leaders salvaged the subsidy, partly in the name of global warming prevention (Pianin 1998). Global warming appears to have saved the day for the corn producers.

Following the corn producers' cue, U.S. soybean producers heralded the environmental benefits associated with blends of diesel fuel and soybean oil (National Biodiesel Board 1998). In efforts to gain regulatory approval of biodiesel as an "alternative fuel" to substitute for ordinary diesel, which would insure the industry's participation in the Department of Energy's alternative fuel program, the lobbying

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

organization indicated that "biodiesel helps reduce the effects of global warming by directly displacing fossil hydrocarbons" (National Biodiesel Board 1998).[6]

As regulation theory predicts, not every member of an industry expects to benefit by Kyoto restrictions. For example, Dean Kleckner, president of the 4.8-million-member American Farm Bureau Federation, opposed the protocol "because of its potential harm to U.S. farmers." Kleckner reflected the concerns of farmers who expect to see Kyoto-induced higher prices for food, fertilizer, and fuel (Farm-State Senators Skeptical 1998). The differential effects generated by regulation explain the formation and destruction of political coalitions.

The Breakup of Anti-Kyoto Coalitions

The Kyoto Protocol provides a setting in which some Bootleggers become converted to Baptists. One of the larger anti-Kyoto groups, the Global Climate Coalition (GCC), which was formed by major oil producers and hundreds of other firms, attempted to debunk Kyoto's weak scientific underpinnings and emphasized the expected economic costs of the protocol. However, some of the members began to see a silver lining around the Kyoto cloud. In June 1998, Shell Oil announced its departure from GCC. Friends of the Earth representative Anna Stanford claimed credit for Shell's green conversion, declaring: "We're delighted that our hard work has paid off, that Shell has bowed to public pressure and seen that the future lies in fighting climate change and investing in green energy" (Shell Withdraws from Global Climate Coalition 1998). Shell responded that "there are enough indications that CO_2 emissions are having an effect on climate change" (Magada 1998) and that the firm was "promoting the development of the gas industry particularly in countries with large coal reserves such as India and China" (Magada 1998). With Kyoto's help, firms with strategically located supplies of clean natural gas could improve their bottom lines while improving their green image.

British Petroleum's (BP's) earlier decision to part company with the GCC made Shell's departure a bit easier. Following serious discussions with leaders of the Environmental Defense Fund and the World Resources Institute, the Baptists in this case, John Browne, CEO of BP, indicated that firms such as BP should play a "positive and responsible part in identifying solutions" to the global warming problem (British Petroleum to Take Action 1997). Anticipating increased demand for oil as a cleaner coal

6. Although differential effects may explain the different positions taken by members of the oil industry, the situation faced by coal producers was more clear-cut. Coal producers and related unions are among the most vocal in their opposition. They succeeded in obtaining West Virginia legislation prohibiting the state's division of environmental protection from "proposing or implementing rules regulating greenhouse gas emissions from industrial sites." But when Governor Cecil Underwood signed the bill, he indicated that the state "should continue to encourage the development and implementation of technologies that allow the clean burning of coal" (Governor Signs Bill 1998).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

substitute, BP also announced significantly increased investment in the development of solar and alternative energy technology.

In November 1998, the American Automobile Manufacturers Association, speaking for General Motors, Ford, and Chrysler, refused to help pay for Global Climate Information Project television ads opposing Kyoto (Look Who's Trying to Turn Green 1998). (The project is another major coalition of firms, labor unions, and farmers.) Shortly thereafter, the World Resources Institute gathered executives from GM, BP, and Monsanto to pledge support for Kyoto. Bill Ford, the newly named president of Ford Motor Company, stated: "There is a rising tide of environmental awareness. Smart companies will get ahead of the wave. Those that don't are headed for a wipeout" (Look Who's Trying to Turn Green 1998). Of course, pure environmentalism might explain the behavior of firms leaving the anti-Kyoto club, but other incentives may be involved, too.

In October 1998, Senate Bill 2617 was introduced, amending the Clean Air Act to "provide regulatory relief for voluntary early action to mitigate greenhouse gas emissions."[7] The proposed legislation, which received strong bipartisan support, would provide advanced carbon-reduction credits for actions now under way to reduce emissions. If enacted, the rule change could provide immediate and massive bottom-line benefits to carbon-emitting firms. For example, in the past three years, Mobil Oil has cut CO_2 emissions by 1 million tons (Salisbury 1998a). At $300 per ton, that reduction becomes a potential asset worth $300 million. The U.S. electric utility industries have actions under way that will cut emissions by 47 million tons of CO_2 in two years. The potential side payments associated with this much emission reduction are enough to make a firm revise its anti-Kyoto stance and then push for restrictions and an emission-credit market.

Trimming the Budding Permit Market

Strategic actions taken to limit the scope of the budding permit market would redound to the benefit of U.S. firms that gain "advanced credit" for actions already taken. With the market constrained to the United States, credit prices would be higher than otherwise. British Deputy Prime Minister John Prescott may not have realized that his efforts to make the United States feel the pain of Kyoto could play into the hands of American firms with pre-endowed credits. Early on, Prescott showed disgust at the idea that U.S. agents would "buy tradable greenhouse emission permits from Russia" (Raven 1998). He stated that "Europe has always been clear that while we accept the trading possibilities in this matter, they should not be used as a reason for avoiding taking action in your own country" (Raven 1998). However, the European Commission's June 3, 1998, communication setting out principles for the November Buenos Aires meeting of Kyoto parties sent a somewhat confusing signal: "It is recognized that the flexible mechanisms can play an important role in meeting commitments at least cost, thereby safeguarding

7. Communication with Cato Institute, November 30, 1998.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the competitiveness of EU industry. The existence of the EU bubble does not prevent the Community from fully participating in international emission trading" (Climate Change 1998, 2). The EU expects to gain internally by allocating burdens differentially across countries while meeting an overall goal and to gain externally through managed emission trading. Still, the Communication endorses Prescott's position regarding U.S. trading strategies:

> At Buenos Aires, discussions on emission trading should focus on ensuring the establishment of strict rules and for setting minimum requirements that any Party or private entity needs to fulfill in order to participate in international trading. . . . It is also necessary to define the Protocol's use of the word "supplemental" in respect to the contribution of the flexible mechanisms. In principle a ceiling should be set for trading to ensure that the main reduction in emissions are by domestic efforts. (Climate Change 1998, 2)

Analyzing the EU Allocation Scheme

In June 1998, EU leaders met to negotiate each member's reduction allocation (Friends of the Earth 1998). The draft proposal called for the individual reductions shown in table 2, which lists proposed emission reductions in descending order.

Table 2: EU Member State Emission Reduction Goals: 1990–2010

Country	Percent Change from 1990 Levels
Luxembourg	–28.0
Denmark	–21.0
Germany	–21.0
Austria	–13.0
United Kingdom	–12.5
Belgium	–7.5
Italy	–6.5
Netherlands	–6.0
France	0
Finland	0
Sweden	+4.0
Ireland	+13.0
Spain	+15.0
Greece	+25.0
Portugal	+27.0

Source: Friends of the Earth 1998.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Modeling the Proposal

To explain these proposed targets, I fitted a regression equation, using as a dependent variable the number of tons of carbon emissions to be added or reduced in the 1990–2010 time period for each European Union country. This was calculated by multiplying the percentages in table 2 by each country's 1987 level of carbon emissions.[8] Independent variables included in the linear model are the 1995 GDP per capita in U.S. dollars, the 1995 ratio of carbon emissions to GDP (kg/US$), the 1998 population of the country, and the year when each country joined the European Union.[9]

The politics of redistribution suggest that higher-income countries will absorb more of the environmental cleanup load than lower-income countries. The estimated regression coefficient of the GDP-per-capita variable should be negative. On the other hand, the cost of emission reductions will be higher for countries that have "cleaner" GDP. Generally speaking, the lower the amount of CO per dollar of output, the more costly it will be to reduce emissions by another ton. The estimated regression coefficient of the carbon-to-GDP variable should be negative. Thus, for example, France, although its large economy produces a large amount of emissions and the country has a relatively high income per capita, also has a relatively clean GDP. Therefore, France is being asked only to maintain its 1990 emission level.

In the regression equation, the population-size variable permits a test of the redistribution argument that smaller groups value a one-ton allowance more than larger groups, all else equal. The argument is based on the public-choice logic that a given concession to a less populous country is worth more per capita than the same concession to a more populous country (Chen 1997). This implies that the estimated regression coefficient of the population variable should be negative. The year of EU entry is included in the regression equation to test for the effect of side payments from older to newer members. The threat of exit is always greater for newer members than for older ones. Side payments in the form of emission allowances help to keep newer members in the fold. By this argument, the estimated regression coefficient of the year-of-entry variable should be positive. A competing argument maintains that newer members are not as well seasoned in the bargaining process as older members. In that case the estimated regression coefficient of the year-of-entry variable should be negative.

8. Data on emissions from Larsen and Shah (1994, 843). For 1995, data for Luxembourg were not available in *The World Bank Tables* and were constructed by interpolation from Larsen and Shah.

9. Data for the independent variables are for 1995, except for population, which is for 1998, and are taken from World Bank 1998.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Estimate

The following ordinary-least-squares equation, with intercept suppressed, was estimated:

$$tons = -1.477\ percap - 52046\ CO/GDP - 449.128\ pop + 31.173\ year$$

$$(-2.934) \qquad (-2.255) \qquad (-4.707) \qquad (2.980)$$

$$R^2 = 0.63 \quad F(3,11) = 9.04$$

Student's *t*-ratios are shown below the coefficients. As hypothesized, the proposed reductions follow a rough pattern that yields fewer tons of emission growth for higher-income countries, fewer tons for countries with higher carbon-to-GDP ratios, lower allowances for higher-population countries, and higher allowances for newer members of the European Union. For example, Spain, a recent EU member, has a lower income per capita and a "dirtier" GDP than France, but contributes a smaller total carbon load to the environment. Spain is allowed to increase emissions by 15 percent over the 1990 baseline amount, whereas France is to achieve and then maintain the 1990 emission level.

Recognizing the limits of an analysis based on such a small sample, it may still be instructive to interpret the equation's coefficients. At the mean of the estimate, a $1,000 increase of per capita GDP is associated with a 1.47-ton reduction in allowed carbon emissions. An increase of one gram per GDP dollar of carbon emissions (the sample mean is 420 grams) is associated with 52 additional tons of allowed emission growth. An increase of 1 million in population is associated with a loss of 449 tons of emission allowances, and an increase in the year of membership from, say, 1974 to 1975, is associated with an increase of 31 tons in allowances.

Because it is always cheaper to reduce emissions when concentrations are higher, the EU proposal establishes future sellers and buyers of tradable emission-reduction permits. Nation-states with little room for emission growth or lower emission concentrations will buy permits from states with dirtier carbon streams and larger allowances for emission growth. The allocation scheme enables us to predict that wealth will flow generally from northern to southern European countries, at least for trades within the European bubble. The EU plan of encouraging bubble trading within the EU and managing external trades places the central government in the traditional protectionist position of controlling exports and imports. But, in this case, the goods traded are permits (emission reductions), not commodities. An examination of the residuals in the regression equation for emission allowances, to identify allowances more than one standard deviation from the mean value, shows France gaining—and therefore being a potential seller of permits—and Germany and Portugal losing disproportionately in the political process that determined emission allowances.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Final Thoughts

The Kyoto Protocol is perhaps one of the most far-reaching international accords to be reached in modern times. And for all we know, global climate change may be one of the most serious threats faced in modern times. But whereas the climatic theory and evidence of global warming are shaky or at least controversial, the economic theory and evidence that help explain Kyoto policies are well established.

At the outset of this article, I asserted that Kyoto was more about cartelization and rent-seeking than about actions to reduce carbon emissions. To support such a proposition, one must show that the protocol itself contains a framework that allows, if it does not encourage, cartelization; that the scheme for reducing emissions gives rise to differential effects; that the magnitude of costs involved and opportunities for cartelization are large enough to offset the cost of organizing cartels; and that evidence of actions already taken buttresses the cartelization hypothesis.

Having considered the foregoing detailed discussion of the protocol, its costs, its differential effects, and a variety of related activities, the reader can judge whether the evidence is compelling. Agreeing that Kyoto is more about rent-seeking cartel efforts than about heat-reducing climate control does not negate the possibility that global warming is a real phenomenon that deserves attention. But if global warming is a genuine threat, the analysis presented here suggests that the Kyoto Protocol is not a useful mechanism for allaying that threat. What then might be a more suitable response? Several policy actions come to mind.

First, an independent research organization funded by tax revenue should be commissioned to measure, monitor, and report on temperature changes and related conditions. The monitoring organization should be insulated from the political process. Specifically, it should not be a part of the United Nations or the U.S. Environmental Protection Agency. In addition to monitoring and reporting, the organization should analyze data and provide evidence of the extent to which warming is related to human activities as opposed to natural atmospheric changes.

Second, if there is persuasive evidence that human activity is causally related to global warming, nations must determine whether on balance the warming entails more costs than benefits. If global warming is beneficial for some countries but harmful to others, actions can be considered for accommodating migration and other remedies for negatively affected people as well as for the affected natural environment. If human-induced global warming is found to be harmful on balance, then policies should be adopted to alter the actions that contribute significantly to the problem. Kyoto-type restrictions of carbon emissions may become relevant, but the mechanisms for achieving such reductions must include all people and must allow for side payments and other measures that enable developing countries to have access to energy.

Third, if global disaster is pending, access to accurate information becomes a top priority. As argued by Friedrich Hayek (1945), the price system is the most effective

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and lowest-cost information system available to mankind. Political actions that disguise or distort accurate prices should be eliminated. In particular, subsidies and taxes that affect important relative prices should be eliminated.

Fourth, incentives to encourage changes in investment, the discovery of new technologies, and the migration of capital and people should be enhanced. Capital-gains taxes should be repealed. Depreciation schedules should be shortened. Immigration policies should be liberalized. Markets and borders should be opened.

Of course, in making such policy recommendations, one presupposes a public-interest theory of government, in which politicians desire to minimize social costs and resist the pressures that emerge when special interests struggle for advantage. Unfortunately, the Kyoto story I have just told provides little if any reason to believe that public-interest policy recommendations, even if logically sound and empirically well founded, will receive serious consideration.

References

Anderson, Terry, and Donald R. Leal. 1991. *Free Market Environmentalism.* San Francisco: Pacific Research Institute for Public Policy.

Antonelli, Angela, and Brett D. Schaefer. 1997. The Road to Kyoto. *Backgrounder,* October 6. Washington, D.C.: Heritage Foundation.

Bandow, Doug. 1997. Ethanol Keeps ADM Drunk on Tax Dollars. October 2. Washington, D.C.: Cato Institute. http://www.cato.org (May 5, 1998).

BBC News. 1998. World: Africa Conference to Prepare African Countries for Cut in CO_2 Emissions. October 22. http://news.bbc.co.uk.

British Petroleum to Take Action on Climate Change. 1997. EDF Letter, September. http://www.edf.org. (July 11, 1998).

Buchanan, James M., and Gordon Tullock. 1975. Polluters' "Profit" and Political Response. *American Economic Review* 65:139–47

Business Roundtable. 1998. *The Kyoto Protocol: A Gap Analysis.* Washington, D.C.: Business Roundtable.

Carrato, Carlo, Marzio Galeotti, and Massimo Gallo. 1996. Environmental Taxation and Unemployment: Some Evidence on the "Double Dividend Hypothesis in Europe." *Journal of Public Economics* 62 (1–2): 141–81.

Chen, Zihoi. 1997. Negotiating an Agreement on Global Warming. *Journal of Environmental Economics and Management* 32: 170–78.

Climate Change. 1998. European Union, DN: IP/98/498. http://europa.eu.int. (July 28).

Committee to Preserve American Security and Sovereignty. 1998. *Treaties, National Sovereignty, and Executive Power: A Report on the Kyoto Protocol.* Alexandria, Va.

Farm-State Senators Skeptical of Climate Plan. 1998. Reuters. http://www.yahoo.com (March 9).

Fialka, John J. 1998. Two Developing Nations Agree to Reduce "Greenhouse" Emissions in Breakthrough. *Wall Street Journal,* November 12, p. A32.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Freedman, Allan. 1997. Senate Sends Signal to Clinton on Global Warning Treaty. *Congressional Quarterly* 28 (July 26): 4.

Friends of the Earth. 1998. EU Greenhouse Gas Deal Too Much Hot Air. Press release. http://www.foe.co.uk (July 11).

Governor Signs Bill Critical of Kyoto Protocol. 1998. http://www.state.wv.us (July 11).

Hardin, Garrett. 1968. The Tragedy of the Commons. *Science* 162: 1243–48.

Hayek, Friedrich A. 1945. The Use of Knowledge in Society. *American Economic Review* 35 (4): 519–30.

Holtz-Eakin, Douglas, and Thomas M. Selden. 1995. Stoking the Fires? CO_2 Emissions and Economic Growth. *Journal of Public Economics* 57: 85–101.

Impact of Carbon Mitigation Strategies on Energy Markets, the National Economy, Industry, and Regional Economies. 1997. Report prepared for UMWA/BCOA by DRI/McGraw-Hill.

Interlaboratory Working Group on Energy-Efficient and Low-Carbon Technologies. 1997. *Scenarios of U.S. Carbon Reductions.* Washington, D.C.: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

Jorgenson, Dale W., and Peter J. Wilcoxen. 1993. Reducing U.S. Carbon Dioxide Emissions: An Assessment of Different Instruments. *Journal of Policy Modeling* 115 (5–6): 491–520.

Kosobud, Richard F., Thomas A. Daly, David W. South, and Kevin G. Quinn. 1994. Tradable Cumulative CO_2 Permits and Global Warming Control. *Energy Journal* 15 (2): 213–32.

Kyoto Protocol to the United Nations Framework on Climate Change. 1997. http://www.cnn.com (July 27, 1998).

Larsen, Bjorn, and Anwar Shah. 1994. Global Tradeable Carbon Permits, Participation Incentives, and Transfers. *Oxford Economic Papers* 46 (5): 841–56.

Leopold, Evelyn. 1998. European Nations Sign Kyoto Global Warming Treaty. Reuters. http://www.infoseek.com (May 4).

List of Signatories to Kyoto Protocol. 1998. Global Climate Change Coalition. http://www.worldcorp.com (July 11).

Look Who's Trying to Turn Green. 1998. *Time,* November 9, p. 30.

Magada, Dominique. 1998. Focus: Shell Revamps Image. Reuters, April 21. http://www.infoseek.com (May 4).

Manne, Allan S., and Richard G. Richels. 1991. Global CO_2 Emission Reductions: The Impacts of Rising Energy Costs. *Energy Journal* 12 (1): 87–107.

National Biodiesel Board. 1998. Agricultural Products Are Key to National Energy Security. February 24. http://biz.yahoo.com (March 2, 1998).

National Corn Growers Association. 1998. National Corn Growers Report. http://www.ncga.com (May 5).

National Impacts. 1998. WEFA National Impacts Link. http://www.api.org (July 27).

Nordhaus, William D. 1991. The Cost of Slowing Climate Change: A Survey. *Energy Journal* 12 (1): 37–65.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Office of Policy and International Affairs. 1997. *Analysis of Carbon Stabilization Cases.* SR-OIAF/97-01. Washington, D.C.: U.S. Department of Energy.

Ostrom, Elinor, and Edella Schlager. 1996. The Formation of Property Rights. In *Rights to Nature,* edited by Susan S. Hanna, Carl Folke, and Karl-Goran Maler. Washington, D.C.: Island Press.

Pearce, David, and Edward Barbier. 1991. The Greenhouse Effect: A View from Europe. *Energy Journal* 12 (1):147–61.

Peltzman, Sam. 1976. Toward a More General Theory of Regulation. *Journal of Law and Economics* (August): 211–40.

Pianin, Eric. 1998. Gingrich Halts Move to End Ethanol Subsidy. *Greenville News,* May 7, p. 6D.

Posner, Richard A. 1974. Theories of Economic Regulation. *Bell Journal of Economics and Management Science* (Autumn): 335–58.

Raven, Gerrard. 1998. EU Urges U.S. to Implement Kyoto Global Warming Deal. Reuters. http://www.infoseek.com (May 4).

Salisbury, Laney. 1998a. Anti-Kyoto Group Disappointed by Shell Pullout. Infoseek: The News Channel. http://www.infoseek.com (May 5).

———. 1998b. Enron Exec Wants Clean Energy Tax Break. Reuters, February 26. http://yahoo.com (March 2).

Shell Withdraws from Global Climate Coalition. 1998. Friends of the Earth. http://www.foe.co.uk (July 11).

Sinclair, Peter J. N. 1994. On the Optimum Trend of Fossil Fuel Taxation. *Oxford Economic Papers* 46 (5): 869–77.

Singer, S. Fred. 1999. *Hot Talk, Cold Science: Global Warming's Unfinished Debate* (revised second edition). Oakland, California: The Independent Institute.

Sparber, Peter G., and Peter E. O'Rourke. 1998. Understanding the Kyoto Protocol. *Perspectives on Legislation, Regulation, and Litigation* 2 (4). Washington, D.C.: National Legal Center for the Public Interest.

Stark, Craig. 1996. Inventory of Greenhouse Gases. Iowa Energy Bulletin. http://www.state.ia.us/government (May 5, 1998).

Stigler, George J. 1971. The Economic Theory of Regulation. *Bell Journal of Economics and Management Science* (Autumn): 3–21.

Sutherland, Ronald J. 1998. *Achieving the Kyoto Protocol: An Analysis of Policy Options.* Washington, D.C.: American Petroleum Institute.

United Nations Framework Convention on Climate Change. 1998. The Kyoto Protocol. http://www.unfec.de/fccc/conv/file01.htm (October 19, 1998).

U.S. Department of Energy. 1998. *Impacts of the Kyoto Protocol on U.S. Energy Markets and the U.S. Economy.* Energy Information Agency, Washington, D.C.: U.S. Government Printing Office.

Whaley, John, and Randall Wigle. 1991. Cutting CO_2 Emissions: The Effects of Alternative Policy Approaches. *Energy Journal* 12 (1): 109–24.

World Bank. 1998. *World Resources: 1998–99.* Washington, D.C.: World Bank.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Yandle, Bruce. 1983. Bootleggers and Baptists: The Education of a Regulatory Economist. *Regulation* (May–June): 12–16.

———. 1997. *Common Sense and Common Law for the Environment.* Lanham, Md.: Rowman and Littlefield.

———. 1998. *Bootleggers, Baptists, and Global Warming.* PERC Policy Series PS-14. Bozeman, Mont.: Political Economy Research Center.

Yellen, Janet. 1998. Testimony before the House Commerce Committee, March 4.

Acknowledgments: This paper draws on "Bootleggers and Baptists in the Afterglow of Kyoto," a paper presented at the Hoover Institution conference "The Greening of U.S. Foreign Policy," October 15–18, 1998.

Partisan Review

Summer 1999

Featuring:

Denis Donoghue on T. S. Eliot • **Michal Govrin's** "Journey to Poland" • **Walter Laqueur** on the Holocaust generation • **Sanford Pinsker** on the academic novel • Comments from **William Phillips** and **Edith Kurzweil** • Fiction by **Alfred Lichtenstein** and **Leonard Michaels** • Fiction Chronicle by **Millicent Bell** • "At the Galleries" with **Karen Wilkin** • Book reviews by **Eugene Goodheart** and **H. J. Kaplan** • Poetry by **David Ferry** and **W. S. Merwin**

Single copy US $7.50 (includes shipping & handling).
One year subscription (four issues) US $22.00.
Send check, money order, or VISA/MasterCard order to
Partisan Review, 236 Bay State Road, Boston, MA 02215
(617) 353-4260; Fax: (617) 353-7444
www.webdelsol.com/Partisan_Review

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Twenty Years after Humphrey-Hawkins

An Assessment of Fiscal Policy

JODY LIPFORD

The combination of the Great Depression and the Keynesian revolution stripped most economists and politicians of their belief in the stability of the private economy and legitimized the use of stabilization policies to counteract macroeconomic fluctuations. Such policies gained legal standing and substance with the passage of the Employment Act of 1946 and the Full Employment and Balanced Growth Act of 1978 (Humphrey-Hawkins Act), both of which commit the U.S. government to use fiscal and monetary policies to achieve the goals of full employment, price stability, and economic growth.

Yet, since the passage of those acts, many economists have questioned the efficacy of stabilization policies. The dual challenges of rational expectations theory and Ricardian equivalence, in particular, gave rise to the possibility—or the certainty, according to some economists—of policy "neutrality." Although the determination of policy effectiveness, or the lack thereof, is surely important, the emphasis on these worthy questions has been misplaced. A more important question is whether stabilization policies are even implemented in congruence with short-run macroeconomic objectives. In this article I argue that political pressures in democratic government make the "proper" implementation of stabilizing fiscal policies highly improbable.[1] Specifically, pressures to satisfy constituents will consistently result in high levels of

Jody Lipford is an associate professor of economics at Presbyterian College, Clinton, South Carolina.

The Independent Review, v.IV, n.1, Summer 1999, ISSN 1086-1653, Copyright © 1999, pp. 41–62

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

government spending, inadequate tax revenues to fund that spending, and the appeasement of politically effective interest groups, all of which supplant fiscal policies that might genuinely attenuate the fluctuations of the business cycle.

In what follows I briefly review the Employment Act of 1946 and the Full Employment and Balanced Growth Act of 1978, highlighting their emphasis on government's commitment to full employment, and then discuss criteria for effective stabilization policy and the obstacles to such policies in a democratic political setting. Next, I investigate whether fiscal policy since 1978 has been countercyclical and examine six key pieces of fiscal legislation to determine how well they meet the criteria developed earlier.

Macroeconomic Stabilization and Fiscal Policy Legislation

In the aftermath of the Great Depression and World War II, the national government undertook an unprecedented responsibility to promote the economic good of the nation, enacting the Employment Act of 1946. The act explicitly declares that "it is the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essentials of national policy . . . to promote maximum employment, production, and purchasing power." To facilitate the achievement of this goal, the act required publication of the *Economic Report of the President,* created the Joint Committee on the *Economic Report,* and established the Council of Economic Advisors, which has the responsibility (among others) "to develop and recommend to the President national economic policies . . . to avoid economic fluctuations or diminish the effects thereof." Writing from a historical perspective, Bradford De Long goes so far as to say that the act provided a "signal" that "an administration that failed to achieve acceptable macroeconomic performance was a failed administration" (1996, 51).

Reacting to the high unemployment and inflation of the 1970s, the federal government recommitted itself to the goals of full employment, economic growth, and price stability with the passage of the Full Employment and Balanced Growth Act of 1978. Like its predecessor, the act places the responsibility for macroeconomic performance squarely on the national government. Unlike its predecessor, however, the 1978 act set numerical targets of no more than 4 percent unemployment and 3 percent inflation by 1983, with the inflation target to be reduced to zero by 1988. In its discussion of the president's budget, the act declares that "the expenditure and revenue elements of the President's Budget shall be developed to promote the purposes, policies, and goals of the Full Employment and Balanced Growth Act of 1978" and that the "size of the President's expenditure and revenue proposals . . . shall be determined in a manner which gives consideration to the needs of the economy."

1. An examination of the implementation of monetary policy would be equally important but is beyond the scope of this article.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

At the same time the act recognized the inadequacy of fiscal and monetary policies alone to attain full employment. To supplement those traditional policies, a number of "supplementary programs and policies" were proposed, including countercyclical employment policies, regional and structural employment policies, and youth employment policies, among others. Thus the 1978 act was larger, more complex, and more specific than its predecessor.[2]

The Criteria for and Obstacles to Stabilizing Fiscal Policy

The Criteria

For illustrative purposes, it is helpful to consider, as John Maynard Keynes apparently did, a "straw man" as policy maker. This straw man of policy is wise and benevolent, seeking to smooth economic fluctuations for the common good and completely without regard to his own interests. The illustration is further extended by assuming a citizenry of straw, a people who are unafflicted by rational ignorance of long-term policy effects and who never seek redistributive gains by means of policies with narrowly focused benefits.

For the sake of argument, I will assume the efficacy of fiscal policy for stabilization purposes, deliberately ignoring the implications of rational expectations and Ricardian equivalence theories. In this idealistic setting, fiscal policy will necessarily be conducted according to two principles. First, government budgets will exhibit a clear countercyclical pattern. In recessions, the government will raise spending or lower taxes to create a deficit that, according to standard Keynesian theory, will stimulate the economy, helping to restore full employment and economic growth. In times of growth and prosperity, especially if inflation is occurring, the government will cut spending or raise taxes, yielding a surplus that restrains growth and inflation.[3]

A second principle is that policies to change spending and taxes should be broadly based. To spend on programs that provide relatively more benefits to some than to others or to tax some more heavily than others is to introduce redistributional actions inconsistent with the more public-spirited objective of macroeconomic stabilization.

Adherence to these principles should yield appropriation and tax policies that are brief and simple. Complex spending formulas, "pork-barrel" projects, and multivolume tax codes should be alien to the policy maker and the citizen alike. The cause and (intended) effects of any fiscal policy should be easily known and understood. No citizen should ever worry about whether he (individually) will be "better off" or "worse off" under an upcoming year's fiscal regime. Spending cuts and tax

2. Higgs (1987) provides theory and evidence that government intervention in the economy tends to accompany crises. Therefore, it is not surprising that these acts were passed in the wake of the Great Depression and the high rates of unemployment and inflation experienced in the 1970s.

3. Ben Bolch (1998) writes that the "perfectionist Keynesian vision [of demand management by government] remains so taken for granted that in the vast majority of undergraduate macroeconomics courses, government control of the business cycle is treated as both proper and efficacious" (495).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

increases may make citizens worse off, but in a predictable and proportionate way. Likewise, spending increases and tax cuts might improve citizens' welfare, but the improvements would be easily discerned and would yield no relative advantage to one citizen over another. Fiscal policies would simply serve the public interest by mitigating economic fluctuations.

The Obstacles

To any American who has struggled with a 1040 form (even a 1040EZ) or contemplated the impact of an "omnibus budget reconciliation bill" on his personal finances, the policy maker of straw is as easily blown down as the pig's straw house in the childhood story.[4] The wisdom of the policy maker is uncertain; his benevolence is surely suspect. Moreover, citizens are not fully informed of policies and their effects, in either the short run or the long run, nor are they dispassionate participants in the political process.[5]

When policy is influenced by politics, as it must be in a democracy, its content and effects will not correspond to those that would result from a disinterested application of Keynesian policy prescriptions. James Buchanan and Richard Wagner (1977) argue forcefully that the political pressures placed on legislators and presidents yield an asymmetry in the implementation of fiscal policy: the government creates stimulative budget deficits not only in recessions, as the wise and benevolent policy maker would surely and rightly do, but also in times of prosperity. Spending increases and tax cuts yield votes regardless of the economic setting, resulting in continual deficits, an expanding public sector, and inflation.[6] In essence, political pressures preclude the possibility of countercyclical fiscal policy.[7]

George Stigler (1973) argues that countercyclical policies may not be observed because they yield little political benefit. He reasons that macroeconomic fluctuations

4. As I write this passage my desk holds at least three pamphlets attempting to explain the Taxpayer Relief Act of 1997.

5. That participants in the political process pursue their self-interest there, just as they do when participating in the market, has long been recognized. For a seminal discussion, see Buchanan and Tullock 1962, chapter 3.

6. William Keech's (1995) insightful analysis of democracy's effects on macroeconomic outcomes emphasizes that democracy is neither a necessary nor a sufficient condition for fiscal irresponsibility; but in the spirit of Buchanan and Wagner, Keech argues that once informal rules against deficits are broken, democratic institutions may offer little hope of resolving the problem.

7. A complementary literature hypothesizes that because of political pressures, macroeconomic policies are timed to influence electoral outcomes. In seminal articles, William Nordhaus (1975) and Duncan MacRae (1977) argued that policy makers attempt to lower unemployment before elections, only to let it rise afterward to fight inflation. Evidence of a political business cycle, however, is hardly overwhelming. Neither Bennett McCallum (1978) nor Nathaniel Beck (1982) finds supportive evidence, and in an exhaustive series of tests, Alberto Alesina and Nouriel Roubini with Gerald Cohen (1997) find no supportive evidence for the United States and only limited supporting evidence for a sample of eighteen OECD countries. Further, Martin Paldam (1981) argues for and presents evidence of stimulative policies just *after* an election. He explains this counterintuitive result as promise-keeping behavior by legislators who believe that voters have long memories.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

are short-lived, that those adversely affected by recessions are relatively few and may be unlikely to vote, that some voters may benefit from a recession (for example, those who keep their jobs and enjoy lower inflation), and that recessions may have genuinely external causes. What clearly must matter, in Stigler's view, are redistributional policies that affect relatively narrow groups and interests. In those cases, benefits are focused and political rewards high.[8]

In a democracy, the problems of political motivation and influence are further compounded by the slowness with which democratic institutions act, so that even well-intended and wisely formed policies may be poorly timed. "Inside lags," the time necessary to determine macroeconomic conditions and formulate policy responses, may be long. Further, once enacted, policies affect the economy only after another time lag, the "outside lag."

On the other hand, automatic stabilization policies may circumvent political motives and time lags by requiring higher spending and lower tax revenues in recessions and the opposite during times of prosperity (for example, through the cyclical variation of unemployment compensation benefits and personal and corporate income taxes). Whether deliberate or inadvertent, automatic fiscal stabilization policies amount to an advance commitment by policy makers to smooth economic fluctuations.

In the remainder of this article I examine the effects of politics on the two policy issues I have raised. In particular, has fiscal policy been countercyclical, and have fiscal policies been broadly based? The answer in both cases is an unequivocal no. The evidence, strictly interpreted, reveals a persistent bias in favor of budget deficits regardless of economic conditions. However, a less restrictive interpretation of fiscal policy, focused on changes in the deficit, shows that countercyclical policies have been carried out sixteen times over the past twenty years. The evidence also reveals that fiscal policies have been shaped by political pressures to achieve a host of unrelated goals and to satisfy a plethora of narrow interests. Examination of one key piece of fiscal legislation in each presidential term since 1978 will demonstrate a multifaceted fiscal policy rooted in the desire for income redistribution, for "social engineering" (for example, spending with the ostensible goal of improving education), and for the support of interest groups as diverse as the oil industry and Vietnam veterans.

Has Fiscal Policy Been Countercyclical?

First, we ask whether fiscal policy has been conducted according to Keynesian principles. As shown in table 1, the federal government has run deficits every year since the

8. Support for Stigler's view is also mixed. Ray Fair (1978) and Mark Crain, Thomas Deaton, and Robert Tollison (1978) find that macroeconomic variables do influence presidential elections. James Kuklinski and Darrell West (1981) find that prospective economic conditions affect Senate elections but not House elections. In the spirit of Stigler, they suggest that House members are held accountable for serving constituent interests whereas senators are held responsible for national problems.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

passage of Humphrey-Hawkins, with the exception of 1998, regardless of macroeconomic performance. Prior to 1998, the most recent surplus occurred in 1969. Indeed, the real deficit and the growth of real GDP are both negative only in 1980, 1982, and 1991, and both positive only in 1998—hardly consistent with Keynesian countercyclical policy. Estimating a simple regression of the real deficit against the change of real GDP from 1979 to 1998 reveals an insignificant relationship, as evidenced by an F-statistic of 0.973. Buchanan and Wagner's hypothesis seems strongly supported.

Table 1: Government Deficits and Macroeconomic Conditions

Year	Deficit or Surplus	Change in Real Deficit	Growth in Real GDP	Unemployment Rate	Inflation Rate
1978	–59	–3.0	5.37	6.1	7.6
1979	–41	42.6*	2.83	5.8	11.3
1980	–74	–48.7*	–0.34	7.1	13.5
1981	–79	2.7	2.29	7.6	10.3
1982	–128	–62.6*	–2.13	9.7	6.2
1983	–208	–101.8	3.97	9.6	3.2
1984	–185	40.4*	7.00	7.5	4.3
1985	–212	–26.3	3.57	7.2	3.6
1986	–221	–4.1	3.08	7.0	1.9
1987	–150	93.7*	2.95	6.2	3.6
1988	–155	0.5*	3.82	5.5	4.1
1989	–153	9.5*	3.36	5.3	4.8
1990	–221	–65.5*	1.23	5.6	5.4
1991	–269	–40.4*	–0.93	6.8	4.2
1992	–290	–13.5*	2.71	7.5	3.0
1993	–255	41.5*	2.33	6.9	3.0
1994	–203	55.4*	3.46	6.1	2.6
1995	–164	41.0*	2.28	5.6	2.8
1996	–107	55.0*	3.45	5.4	3.0
1997	–22	77.6*	3.93	4.9	2.3
1998	69	80.9*	3.88	4.5	1.6

Sources: Facts and Figures on Government Finance, 32d edition, table C1, with updates provided by the Tax Foundation; and the 1999 issue of *The Economic Report of the President*, table B-2 (real GDP growth), table B-42 (unemployment rate), table B-63 (inflation rate), and table B-78 (deficit).

Note: Deficit/surplus figures are in billions of dollars. Nominal deficit figures are given in the first column, but the changes in the deficit are in real terms (negative numbers signify increases; positive numbers, decreases of the real deficit). Asterisk designates countercyclical change in the real deficit.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Yet, advocates of activist fiscal policy might counter that what matters is the *response* of fiscal policy to changes in economic conditions. Though deficits have been endemic through the last two-thirds of the twentieth century, the more important question may be whether deficits increased during economic downturns and decreased during economic expansions. Application of this less stringent standard reveals a relatively countercyclical fiscal policy. As shown in table 1, positive correlations are clear and fairly consistent: from 1979 to 1998, changes in the deficit have corresponded to changes in real GDP or in the unemployment rate in a way that is qualitatively countercyclical for sixteen of twenty years. Only in 1983, 1985, and 1986 did the deficit increase while real GDP grew and the unemployment rate declined. Fiscal policy in 1981 is also best considered procyclical, because the decline in the real deficit is accompanied by a 0.5 percentage point rise in the unemployment rate despite the increase in real GDP. (Although 1990 and 1992 are years of rising deficits and positive real GDP growth, these increases in the deficit are best interpreted as countercyclical because the unemployment rate rose in each year.) A simple regression of changes in the real deficit against changes in real GDP for 1979 to 1998 is significant; the resulting F-statistic is 10.006. When the independent variable is switched to the change in the unemployment rate, the F-statistic is even higher at 11.274.

Historical Analyses

Let us now turn to a historical examination of fiscal policy. Detailed data on spending and tax revenues are provided in tables A1 and A2 in the appendix.

The early 1980s brought a severe recession. A combination of higher defense and mandated spending, along with reductions or only small increases in individual income tax collections and plummeting corporate tax revenues yielded sharp and, in the Keynesian perspective, appropriate rises in the deficit in 1980 and 1982. As stated earlier, the slight decrease in the real deficit in 1981, which stemmed largely from a short-lived economic rebound that drove up individual income tax collections, is best considered procyclical because of the concurrently rising unemployment and the temporary and weak character of the economy's growth. Therefore, the stabilizing influence of fiscal policy in the early 1980s was only partial.

The ensuing years of the 1980s brought strong economic growth, presided over by a president verbally committed to balancing the budget. If ever the budget should have been balanced, those were the years. (Recall: "If not us, who? If not now, when?") Yet, such was not the case; rather deficits rose to record levels. Even changes in the deficit in 1983, 1985, and 1986 were procyclical, as higher spending across all categories (nondefense discretionary spending in 1983 and 1986 excepted) outstripped rising tax revenues. By the end of the decade the deficit was falling, mainly because of large gains in individual-income, corporate-income, and social-insurance taxes, which offset higher mandated and interest expenditures.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Economic growth slowed again in 1990, and the economy entered a mild recession in 1991. Fiscal policy was countercyclical: deficits rose along with the unemployment rate through 1992. Again, higher mandated expenditures along with sluggish or negative growth in tax revenues generated extraordinarily high deficits.

As in the mid- to late 1980s, the years following the early-1990s recession brought strong economic growth and, accordingly, steadily declining real deficits. Finally, in 1998, the government ran a fiscal surplus. The decline in the deficit and the ultimate surplus again resulted largely from automatic policies, as individual-income, corporate-income, and social-insurance taxes all posted large gains throughout the decade, though declining defense spending also contributed to the marked deficit reduction.

To summarize, with the exception of 1998, every year since passage of the Humphrey-Hawkins bill has brought stimulative fiscal policy, as evidenced by continued deficits, even during periods of prolonged expansion in the 1980s and 1990s. On the strength of this evidence one might conclude that the notion that fiscal policy is used to stabilize the macroeconomy is demonstrably false. Nevertheless, if a less stringent standard—the change in the real deficit—is used to evaluate fiscal policy, the evidence reveals a primarily countercyclical policy: deficits generally widen during recessions and contract during expansions.

The Question of Lags

This contemporaneous analysis may, however, be questioned on grounds that discretionary fiscal policy can be implemented only after a time lag. To account for this consideration, I examined fiscal policies after one-year and two-year lags to determine how lagged values correspond to countercyclical ideals. Perhaps surprisingly, countercyclical policy is observed even less often when changes in the real deficit are compared to lagged values of real GDP growth and changes in the unemployment rate. Specifically, when a one-year lag is considered (reducing the sample period to 1980 to 1998), procyclical policy is observed in six years: 1980–81, 1985–86, 1990, and 1993. When a two-year lag is considered (reducing the sample to 1981 to 1998), procyclical policy is observed in seven years: 1984–86, 1990–91, and 1993–94. Countercyclical fiscal policy is clearly more evident when contemporary changes in deficits are compared to contemporary rates of GDP growth and unemployment.[9]

Automatic versus Discretionary Fiscal Policy

The prominent roles of mandated spending, individual and corporate income tax collections, and social-insurance tax collections in the historical analysis, along with the lack of evidence correlating current changes in deficits to past economic conditions, all

9. See Keech (1995, 160–62) for evidence that all expansionary countercyclical fiscal initiatives since World War II were enacted after the corresponding recessions were over.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

point to the relative significance of automatic fiscal policy over discretionary fiscal policy. Indeed, De Long writes that historically "it is difficult to argue that on balance 'discretionary' fiscal policy has played *any* stabilizing role" and that the role of automatic stabilizers is important because of the federal budget's large size (1996, 45–47; italics in original). Because of the relative importance of automatic fiscal policy, I briefly analyze some of its components.

Inspection of the data reveals that countercyclical automatic fiscal policy results more from changes in tax revenues than from changes in mandated spending. Changes in individual-income, corporate-income, or social-insurance tax revenues, either singularly or in combination, have been countercyclical in at least thirteen of the last twenty years, despite less-than-stellar performance during recessions, such as when individual income taxes rose in 1980, corporate income taxes rose in 1991, and social-insurance taxes rose in 1980, 1982, and 1991. On the other hand, mandated spending has been procyclical in eleven of twenty years, despite countercyclical movements in 1980, 1982, and 1991. Mandated expenditures are of dubious use as a tool of stabilization policy, no doubt because of prominent entitlement programs such as Social Security, Medicare, and veterans' benefits, which together accounted for an estimated 37.1 percent of federal outlays by 1998, compared to just under 30 percent in 1979.[10] Countercyclical policy is apparently more easily achieved in the realm of taxes.

What role does nondefense discretionary spending play in stabilization policy? First, notice that with mandates and interest currently accounting for approximately two-thirds of federal outlays (up from 52.5 percent in 1979), the scope of discretionary spending is limited.[11] Indeed, nondefense discretionary expenditures fell from just under one-quarter of total outlays in 1979 to just over 17 percent in 1998.[12] A far worse problem, however, is the procyclical pattern of nondefense discretionary spending, which is evident for eleven of the past twenty years, including the recession year 1982. For a spending category arguably most subject to manipulation in the pursuit of macroeconomic policy goals, "getting it right" less than half the time suggests an unwillingness or inability of the Congress, the president, or both to use discretionary spending for stabilization purposes.

Although a policy of advance commitment to macroeconomic stabilization could hardly have been intended when the country's tax structure and many of its social programs were established during the early decades of this century, those automatic policies, rather than the discretionary ones, have been primarily responsible for any stabilizing effects of fiscal policy.

10. See the 1986 issue of the *Economic Report of the President,* table B-74, and the 1999 issue of the *Economic Report of the President,* table B-81.

11. See table C-5 of *Facts and Figures on Government Finance,* 32d edition. The 1998 estimate was provided by the Tax Foundation.

12. See table C-5 of *Facts and Figures on Government Finance,* 32d edition. The 1998 estimate was provided by the Tax Foundation.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

A Closer Look at Key Fiscal Legislation

To highlight the uses of fiscal policy that are clearly inconsistent with macroeconomic stabilization, in this section I review a single major tax or budget act for every presidential term since the passage of the Humphrey-Hawkins Act. My purpose is not to offer a comprehensive account of the content or impact of the various acts, but rather to show that fiscal policy is a flexible and multifaceted policy tool whose objectives diverge widely from the straightforward goal of macroeconomic stabilization.

The Revenue Act of 1978

In his message to Congress in support of the Revenue Act of 1978, President Carter proposed tax reforms aimed at "sustaining our economic recovery" (Carter 1978, 23-E). With the unemployment rate at 6.1 percent and falling, real GDP growth at 5.0 percent, and the rate of inflation at 7.6 percent and rising (1978 figures), it is questionable how much "sustaining" the recovery needed. Yet, Carter spoke of individual and business tax cuts to reduce unemployment below 6 percent and to stimulate economic growth to historically unsustainable rates of 4.5 to 5.0 percent. In addition, he proposed making the tax system "fairer and simpler" (Carter 1978, 23-E).

The 1978 revenue act touched on individual income taxes, business taxes, and a host of other tax provisions. On net, the act cut taxes by an estimated $18.7 billion—a substantial amount, though still insufficient to offset rising Social Security taxes and increases of income tax liability as inflation pushed taxpayers into higher brackets. Congressmen Charles Vanik (D-Ohio) and J. J. Pickle (D-Tex.) wanted no tax cut, arguing that the cuts were politically motivated and inflationary. Vanik said, "It is regrettable that we have to be acting on a tax reduction bill this close to an election," and proposed a rule that "no tax cut bill can be considered by the Congress within six months of an election" (Congress Approves Tax Cut, 233). Clearly, these tax cuts in a booming economy experiencing historically high inflation illustrate an asymmetric application of fiscal policy, consistent with the theory set forth by Buchanan and Wagner.

By the standard that broadly based changes in tax policy are less subject to political manipulation than narrowly targeted changes, the Revenue Act of 1978 stands as an example of the latter. In a reversal of trend, the act tended to favor wealthy taxpayers over poor ones, in particular by reducing taxes on capital gains. This cut and other tax-cutting provisions were decried by liberal members of Congress, such as Ted Kennedy (D-Mass.) and James Jones (D-Okla.). Jones stated, "I'm not sure I can justify them [tax cuts] economically, but politically they strengthen the bill" (229). Despite the class-charged controversy surrounding the capital gains tax cuts, Congress did help the poor by expanding the earned-income tax credit.

Changes in business taxes vividly highlighted the pursuit of social objectives and special-interest legislation. For example, while Congress made the investment tax credit permanent and more generous for all investments, environmental policy was served by

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a still more generous tax credit for the purchase of pollution-control equipment. To aid urban renewal, Congress, with the approval of the president, extended the application of the investment tax credit to the rehabilitation of commercial and industrial buildings in downtown areas. Congress also provided benefits to the underclass through "targeted job credits" that subsidized labor costs for employers who hired disadvantaged individuals. These persons included "supplemental security income (SSI) recipients, welfare recipients, handicapped people undergoing vocational rehabilitation, and disadvantaged individuals 18–25, Vietnam veterans under 35, convicts released from custody within the past five years and certain students aged 16–18" (221).

Narrowly targeted provisions were many, even if their consequences for revenues were trivial. For example, the act granted special tax provisions and benefits to Arkansas College, the Gallo (wine-producing) family of California, a long-term care facility in Oklahoma, farmers in Michigan, and employees receiving employer-paid education.

The Economic Recovery Tax Act of 1981

If any recent fiscal legislation had the opportunity to implement expansionary countercyclical policy, it was the Economic Recovery Tax Act of 1981. Enacted in the midst of the country's worst recession since the Great Depression, the act did provide relatively straightforward tax cuts.

Specifically, the act provided broad-based cuts in individual income taxes of 5 percent in 1981, 10 percent in 1982, and an additional 10 percent in 1983. The bill also indexed individual income tax brackets to compensate for inflation. Recognizing the potential for fiscal policy to redistribute income, President Reagan contrasted this legislation with prior tax packages as "not merely a shift of wealth between different sets of taxpayers" but a "proposal for an equal reduction in everyone's tax rates [that] will expand our national prosperity, enlarge national incomes, and increase opportunities for all Americans" (Reagan 1981, 17-E). He argued that the government's taxing power "must not be used to regulate the economy or bring about social change" (18-E). Although the tax cuts were cast with a supply-side emphasis, they also represent a case of countercyclical, demand-side policy.

Despite Reagan's rhetoric and the generally countercyclical and broad provisions of the act, however, the legislation was littered with accommodations of interest groups, even if those accommodations and their impacts were relatively minor. Business support was garnered generally by the inclusion of accelerated depreciation schedules for investment spending, while specific industries received special benefits. For example, trucking firms were allowed a deduction to compensate for the devaluation of their licenses by deregulation, and oil firms were partially relieved of windfall profits taxes.

Nor were social objectives absent from the bill. Deposit intermediaries were permitted to offer savings certificates paying 70 percent of the yield on one-year Treasury bills, so long as 75 percent of the new deposits went to home or agricultural loans. In

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

addition, companies that leased transportation equipment to mass-transit systems were allowed to finance their equipment with tax-exempt bonds. And a deduction was created for parents who incurred expenses in adopting "hard-to-place" children.

However fair or meritorious those provisions may seem, they are indicative of a legislative process influenced not only by macroeconomic conditions but also by rent seeking and ideals of the "public good." Fiscal policy, even at its best, is far from pure.

The Tax Reform Act of 1986

Heralded as one of the most important pieces of tax legislation in U.S. history, the Tax Reform Act of 1986 dramatically reduced income tax rates. The maximum marginal tax rate for individuals fell from 50 percent to 28 percent, the maximum marginal rate for corporations from 46 percent to 34 percent. The act also curbed tax breaks and, by the assessment of many, made the tax code fairer.[13] Consideration of stabilization policy was conspicuously absent from the bill.

With real GDP growing at its long-run-trend rate of 3 percent and the inflation rate at its lowest since 1965, it is understandable that an expansionary discretionary fiscal policy was not undertaken. Less explicable is why Congress failed to take steps to lower a (nominal) deficit in excess of $200 billion with the economy in the midst of an eight-year expansion. The Senate did express a concern by passing (by a 72–24 margin) a nonbinding resolution to delay action on the tax bill "until a firm, definite budget agreement has been reached" (Congress Enacts Overhaul, 508). The Senate's zeal, however, proved short-lived, and when confronted with Reagan's opposition to a tax increase, the resolution proved not only nonbinding but ineffective. In the end, the president and Congress agreed that the act should have no impact on federal tax collections, a principle known as revenue neutrality.[14]

Adherence to revenue neutrality may have limited the inclusion of redistributive and social policies in the act, but it did not eliminate them. Of particular importance, the bill exempted six million people from tax liability by raising the personal exemption and the standard deduction and by indexing both for inflation. The act also raised the earned-income tax credit and extended job credits. To further help the poor, the act granted tax credits to landlords who owned rental housing occupied by low-income tenants. And to add a special penalty on the rich, the act assessed a tax (10 percent) on pension benefits

13. James Long (1997) concludes that the net changes in the tax base and tax rates made the tax system more progressive.

14. Failure to reduce the deficit may contribute to another fiscal problem: when deficits are already high, implementation of expansionary fiscal policy becomes problematic, whether the discipline comes from political or economic constraints (e.g., the bond market), as the Clinton administration soon discovered when trying to increase public investment spending in its first term. The notion that an administration might intentionally run large deficits to constrain the spending of a succeeding administration has been advanced by Torsten Persson and Lars Svensson (1989).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in excess of $112,500. On the other hand, interest deductions on consumer debt were phased out, while interest on new loans secured by a first or second mortgage continued to be deductible.

Although the act's provisions in general achieved revenue neutrality by closing tax breaks to compensate for reduced rates, the hopes of rent seekers sprang eternal. Indeed, Bob Packwood (R-Ore.), chairman of the Senate Finance Committee, strongly urged a conference agreement before Congress's August recess "so the special interests and lobbyists don't have three weeks to hit on our members to change what is in this most remarkable tax package" (Congress Enacts Overhaul, 520). Some attempts were thwarted, such as the call from John Heinz (R-Pa.) for accelerated depreciation for formal-wear manufacturers, two of which were located in his state. However, in concessions to southwestern and western states, Congress continued its favorable tax treatment of companies engaged in the production of oil, gas, coal, timber, and other natural resources. On the other side of the country, Daniel Moynihan (D-N.Y.) managed to obtain provisions granting special tax breaks for performing artists.

In addition, the Tax Reform Act of 1986 is a prime example of the time-inconsistency problem that may destabilize economic performance.[15] In a reversal of prior stimulative supply-side policies, the act eliminated the investment tax credit for business and circumscribed the deductibility of contributions to individual retirement accounts for individuals covered by a pension plan or with incomes above a minimal level. In another policy change affecting savings, the capital-gains exclusion was eliminated, raising the maximum rate on capital gains from 20 percent to 28 percent. These dramatic shifts of incentives for saving and investment can hardly be deemed stabilizing for the economy.

The sheer complexity of the bill is evidenced by a conference report of two thousand pages and by 682 "transition rules" that eased the effects of the bill on various businesses. In sum, the Tax Reform Act of 1986 represents the pursuit of redistributive and social objectives, interest-group concessions (or denials), and outright policy reversals, rather than countercyclical policy.

The Omnibus Budget Reconciliation Act of 1990

By 1990, nominal deficits had vaulted over the $200 billion mark for the first time since 1986, and President Bush worried that rising deficits might hinder economic growth, thereby damaging his reelection prospects. Democrats too expressed concern about the deficit, but this common concern masked fundamental disagreements over

15. For an excellent discussion of the time-inconsistency problem, see Kydland and Prescott 1977. In a recent paper, Robert Archibald and David Feldman (1998) highlight the effect of policy uncertainty and inconsistency by presenting evidence that uncertainty over the passage of and rates applied by the Smoot-Hawley tariff contributed to the Great Depression by causing a drop in investment spending by firms with high exposure to international trade.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

budget policy. The 1990 budget deal, "the centerpiece of the year's fiscal work," proved, perhaps, the most contentious and partisan of recent decades (Budget Adopted, 111). The struggle pitted a Republican president who had promised the American people "no new taxes" against a Democratic Congress ostensibly more concerned with "tax equity." After months of negotiations and summit meetings, all in the shadow of the Gramm-Rudman deficit-reduction law, the president and Congress struck a deal that its framers claimed would cut the deficit by $496.2 billion over five years.

Nevertheless, closer examination indicates that the budget deal was not a serious deficit-reduction effort. The act arguably raised dicretionary spending and did nothing to stop escalating entitlement spending. As shown in appendix table A1, real government outlays rose by almost $43 billion in the two years following the budget deal and, with the exception of 1993, have risen every year since 1990.

The act did, however, give the appearance of being a deficit-reduction measure. Title 13 of the act, referred to as the Budget Enforcement Act (BEA), attempted to control spending by setting nonsubstitutable caps for three categories of discretionary spending (defense, international, and domestic) and by requiring that new mandatory spending be financed either by cuts in existing programs or by new revenues, a provision known as "pay-as-you-go."[16] Some analysts argue that these provisions have helped to reduce the deficit and that the early-1990s recession and rising health care costs alone explain the rising real deficits of 1991–92.[17]

Other analysts, however, show that, to the contrary, the BEA "did not reduce the deficit by the $400–$500 billion (over five years) claimed by its framers" (Schick 1992, 22, 24). The reasons are many. First, defense spending caps were set against unrealistically high baselines, so that "what was billed as a cutback turns out to have been a spending increase" (25). Second, caps for domestic spending were set about $42 billion above baseline levels. Although the spending caps may have held, it is absurd to argue they helped to reduce the deficit when they were set at such high levels. In the end, "the president got more for defense, the Democrats got more for domestic programs, and both sides celebrated their gutsy decision to curtail the deficit" (27). Third, domestic spending caps, once set, were adjusted upward by more than $100 billion, mostly because of emergency spending for operations Desert Shield and Desert Storm and for disaster relief (Oak 1995). Finally, and perhaps of greatest importance, the BEA did not stop the growth of existing entitlement spending, including guarantees of deposit insurance. These (mostly indexed) programs continue to grow as new beneficiaries qualify and as costs, especially health care costs, continue to rise. The act produced what Richard Doyle and Jerry McCaffery (1991) have called "no-fault budgeting," which shields politicians from the respon-

16. For a detailed discussion of the Budget Enforcement Act, see Doyle and McCaffery 1991.

17. For an elaboration of this view, see Davis 1997.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sibility for higher spending and deficits so long as they adhere to spending caps and the pay-as-you-go provision.

But if attention to deficit reduction was more token than real, the influence of redistributional and social objectives proved vigorous. The most significant changes affected personal income taxes, where Democrats' desire for more income redistribution and progressivity in the tax system triumphed over Republicans' desire for lower capital-gains taxes to stimulate saving and economic growth. The act raised marginal tax rates on upper-income Americans from 28 percent to 31 percent and, with complicated formulas, cut the exemptions and limited the itemized deductions available to upper-income taxpayers. The capital-gains tax rate was reduced to 28 percent for all investors, but the reduction was meaningless to the vast majority of Americans, who were already in the 28 percent bracket or lower. The "soak the rich" strategy was reinforced by a 10 percent luxury tax assessed on purchases of fur, jewelry, automobiles, airplanes, and boats priced above certain threshold levels.

Although the act moderately raised the cost of Medicare to beneficiaries, it continued the trend of aid to the poor. The act expanded the earned-income tax credit and extended tax credits for targeted jobs and for the construction or rehabilitation of low-income housing. In addition, the act implemented a $22.5 billion (over five years) "child care package" (Budget Adopted, 139–40).

Other provisions reflected social objectives and interest-group pressures. The environmentalist lobby fared well under the act: cars that did not meet legislated fuel-economy standards were taxed at a higher rate, as were ozone-depleting chemicals, and tax credits were extended for the production of alternative fuels. The trucking industry successfully lobbied for and benefited from application of the fuels tax to railroads. And, the act targeted "vices" as a source of revenue, raising excise taxes on alcohol, tobacco, and gasoline.

The political motives underlying many of the act's provisions yield an instructive insight into the formation of fiscal policy. Bush apparently wanted deficit reduction to stimulate growth and enhance his reelection prospects, but not at the cost of lower defense spending. Congress too used the budget deal to improve incumbents' reelection prospects. During the reconciliation process, "House floor debate was less about probability than about scoring political points that would serve candidates' interests in the elections" (164). Democrats privately admitted that "a rate hike would . . . be the most direct way to remind voters that Bush had to renege on his 'no-new-taxes' campaign pledge" (169). Again, politics, not macroeconomic conditions, determined budgetary outcomes.

The Omnibus Budget Reconciliation Act of 1993

In 1993 deficit reduction continued to be a matter of concern. Arguably, deficit reduction was the appropriate fiscal policy for 1993, because the economy had clearly

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

emerged from its recent recession. In the end, the budget act targeted deficit reduction of $504.8 billion over five years through $250.1 billion in new revenues and $254.7 billion in spending cuts. The act also extended the caps on discretionary spending and the pay-as-you-go provision of the 1990 budget deal through 1998. Though the act was generally countercyclical, a close examination shows that it was also filled with spending and tax provisions that catered to special-interest groups and that gave ample opportunity for members of Congress and the Clinton administration to achieve social objectives unrelated to macroeconomic performance.

The burdens of deficit reduction were not imposed evenly. The bill, consonant with Clinton's wishes, made the tax system more progressive by creating additional tax brackets of 36 percent and 39.6 percent for high-income individuals and families. Those narrowly applicable tax rates point to the dual goals of lower deficits and a more egalitarian distribution of after-tax income. Indeed, Clinton helped to sell the plan by reminding the majority of Americans that only the wealthy would pay higher taxes.

Though the act did trim Medicare spending by more than $49 billion over five years, other programs, such as the earned-income tax credit, expanded significantly. And the act not only expanded existing programs; it also created a new entitlement to fund programs that contributed to "family preservation," such as programs aiding adoptive families, foster children, and neglected and abused children.

In other provisions, the tax credit for hiring "hard-to-employ" workers was extended yet again, as was a provision allowing employees to deduct employer-provided educational benefits from their taxable incomes. The tax credit for developers who renovated housing for the poor was made permanent. And to attract capital to low-income areas, the legislation, blatantly disregarding market forces, created 104 "empowerment zones." Tax breaks and grants would be awarded to businesses that invested in and hired from these HUD-designated areas. The budgetary cost of these social programs may have been small, but consideration of only their budgetary cost ignores the costs of resource misallocation.

If President Clinton's redistributive agenda was advanced by the adoption of a more progressive tax code, greater spending on selected social programs, and incentive-induced diversions of private resources to impoverished areas, his environmental agenda did not fare so well. The president had proposed a "carbon tax" (or Btu tax) on energy not only to raise government revenues, but also to reduce emissions of greenhouse gases. From the House Ways and Means Committee to the Senate floor, a wide array of energy-using and -producing industries assaulted any attempt to raise energy taxes. By the time the bill emerged from the conference committee, the energy tax had been reduced to a relatively moderate 4.3-cent-per-gallon hike on most fuels; and the airline industry, aided by the support of Slade Gorton (R-Wash.), had been granted a temporary exemption for jet fuel.

The 1993 Budget Reconciliation Act provides an example of countercyclical fiscal policy characterized by cuts in government spending and increases in taxes in a growing economy already plagued by large deficits. But the act also demonstrates the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

use of fiscal policy to achieve (or attempt to achieve) a variety of social objectives, from a more progressive tax system to a cleaner environment. The question of how meritorious these social objectives may be is normative. However one answers the normative question, the act clearly shows that fiscal outcomes are the outgrowth of a complex interaction between multiple interests and political objectives, only one of which may be the stabilization of the macroeconomy.

The Taxpayer Relief Act of 1997

With the economy still growing briskly into Clinton's second term, the feasibility of a balanced budget became more promising and then took on legislative reality in the form of the 1997 budget deal. In a rare display of bipartisan cooperation, Congress and the president agreed to appropriations and tax bills scheduled to balance the budget by 2002. Nevertheless, with deficits projected for the interim (the 1997 deficit was lower than initially anticipated), $96 billion in tax cuts, and no reform of entitlement spending, the budget could hardly be called countercyclical. Of the 1997 budget deal, one conservative Democrat, Charles Stenholm of Texas, commented, "I am disappointed that we missed the opportunity to make real reforms in the long-term costs of entitlements" (Rubin 1997, 1184). As a result, any period of surpluses may be short-lived.[18]

Indeed, the 1997 legislation made no pretense of macroeconomic considerations, instead tinkering with a wide array of taxes in ways that clearly reflected social objectives. The act promoted education through tax credits, educational savings accounts, and permission for penalty-free withdrawals from IRAs for educational purposes. In a "pro-family" move, the act provided tax credits for children under age seventeen. And in efforts to encourage savings, the act cut the capital-gains tax for assets held more than one year and established Roth IRAs, which allow principal and interest to be withdrawn tax-free.

To help the poor, the 1997 act extended tax credits to employers who hire from "needy" groups, and it offered wage credits to employers hiring former welfare recipients. Following in the footsteps of the 1993 budget act, the 1997 act increased the number of "empowerment zones" by twenty, though the advantages offered most of the new zones were not quite so great as those created originally.

Of particular note, the act complicated the tax code immensely. "The act created 285 new sections to the tax code and 824 amendments. Thirty-six provisions were retroactive; 114 took effect immediately, and 69 more will become effective Jan. 1 [1998]" (Weisman 1997, 3120). The increased complexity of the tax code is expected to result in greater use of tax accountants and lawyers, a surge of mistakes by taxpayers, and perhaps less compliance.[19] The Taxpayer Relief Act of 1997 reinforces the premise

18. See "Overselling the Surplus," *Economist,* May 30, 1998, 23–24.

19. See Jonathan Weisman, "Experts Calculate Rate of Pain from 'Taxpayer Relief Act,' " *Congressional Quarterly Weekly Report,* December 20, 1997, 3120–22.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that macroeconomic conditions are a minor, if not trivial, consideration in the implementation of fiscal legislation.

Conclusion

For more than fifty years, the national government has accepted the responsibility for U.S. macroeconomic performance, most recently affirming that responsibility in the Humphrey-Hawkins Act of 1978. To believe that truly stabilizing policies will be implemented—completely apart from any assessment of policy effectiveness—requires a nearly complete denial of political realities in a democratic system. Political pressures often impede the application of countercyclical policies, because large deficits are popular in expansions as well as in recessions. In addition, social objectives and interest-group pressures override the broader and more public-spirited concern for macroeconomic stabilization. Evidence from the last twenty years reveals a pattern of large and consistent deficits and fiscal legislation characterized by narrowly targeted spending programs and tax breaks.

Fiscal policy has been countercyclical at times. Nevertheless, those policy successes owe more to the inadvertent precommitment of the tax structure and Depression-era social legislation than to legislative reaction to the macroeconomy. Further, recent efforts ostensibly to reduce the deficit have not controlled entitlement spending. The notion that fiscal policy will be used to stabilize economic fluctuations has little empirical justification. Perhaps it is time for the national government to repeal the Full Employment and Humphrey-Hawkins Acts. Even if the advocates of policy neutrality are mistaken, years of experience show that the implementation of fiscal policy for stabilization purposes is difficult, if not impossible, in a democratic setting.

Enlightening ideas for public policy . . .

http://www.independent.org

Find the latest news about research, books and other publications (including *The Independent Review*), Real Audio files of Institute conferences and policy forums, and much more at The Independent Institute's website.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Appendix

Table A1: Changes in Government Spending

Year	Change in Real Deficit	Change in Outlays	Change in Spending by Type			
			Defense	Discretionary	Mandated	Interest
1978	–3.0	37.9	–0.2	14.1	17.3	6.7
1979	42.6	11.9	6.1	–0.9	–0.7	7.4
1980	–48.7	66.9	11.6	12.0	33.4	9.9
1981	2.7	47.6	16.2	–7.8	22.1	17.2
1982	–62.6	34.8	25.4	–27.5	19.9	16.8
1983	–101.8	42.0	21.9	–3.5	22.1	1.6
1984	40.4	18.0	13.6	3.4	–22.9	23.7
1985	–26.3	83.3	22.0	7.9	34.9	18.6
1986	–4.1	23.2	17.3	–3.0	5.0	3.8
1987	93.7	–20.5	0.2	–9.9	–9.0	–1.8
1988	0.5	27.9	–2.1	6.9	13.7	9.4
1989	9.5	38.7	1.0	4.5	20.8	12.4
1990	–65.5	63.9	–18.3	8.2	65.9	8.1
1991	–40.4	22.3	8.0	5.3	5.8	3.1
1992	–13.5	20.5	–26.0	12.3	34.8	–0.5
1993	41.5	–8.0	–17.6	10.2	5.0	–5.6
1994	55.4	17.1	–16.4	6.6	27.6	–0.6
1995	41.0	15.3	–14.8	3.5	4.3	22.2
1996	55.0	10.0	–12.4	–8.8	27.8	3.4
1997	77.6	7.2	0.0	2.9	6.2	–1.9
1998	80.9	56.6	–6.2	9.2	55.0	–1.5

Source: Facts and Figures on Government Finance, 32d edition, table C4, with updates provided by the Tax Foundation.

Note: All figures are in billions of real dollars. Figures for 1998 are estimates.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Table A2: Changes in Government Tax Revenues

Year	Individual Income Taxes	Corporate Income Taxes	Social Insurance Taxes
1978	23.1	2.1	13.0
1979	39.0	1.1	13.9
1980	10.2	−11.9	10.1
1981	28.4	−14.6	15.1
1982	−9.1	−22.5	10.2
1983	−29.4	−19.5	−1.5
1984	−1.5	24.4	29.9
1985	33.0	3.1	22.4
1986	6.9	0.2	14.4
1987	39.4	22.7	12.7
1988	−6.5	8.8	23.3
1989	30.9	5.4	12.4
1990	1.9	−15.3	5.4
1991	−18.0	0.9	0.9
1992	−4.8	−0.5	6.7
1993	20.8	14.2	3.7
1994	20.0	19.1	21.7
1995	30.7	12.1	10.3
1996	48.1	10.3	12.8
1997	59.9	6.1	17.2
1998	25.7	7.3	27.5

Source: Facts and Figures on Government Finance, 32d edition, table C23, with updates provided by the Tax Foundation.

Note: All figures are in billions of real dollars. Figures for 1998 are estimates.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

References

Alesina, Alberto, and Nouriel Roubini, with Gerald D. Cohen. 1997. *Political Cycles and the Macroeconomy.* Cambridge, Mass.: MIT Press.

Archibald, Robert B., and David H. Feldman. 1998. Investment during the Great Depression: Uncertainty and the Role of the Smoot-Hawley Tariff. *Southern Economic Journal* 64: 857–79.

Beck, Nathaniel. 1982. Does There Exist a Political Business Cycle? A Box-Tiao Analysis. *Public Choice* 38: 205–9.

Bolch, Ben W. 1998. Is Macroeconomics Believable? *Independent Review* 2: 485–99

Buchanan, James M., and Gordon Tullock. 1962. *The Calculus of Consent: Logical Foundations of Constitutional Democracy.* Ann Arbor: University of Michigan Press.

Buchanan, James M., and Richard E. Wagner. 1977. *Democracy in Deficit: The Legacy of Lord Keynes.* New York: Academic Press.

Budget Adopted after Long Battle. *Congressional Quarterly Almanac 1990* 46: 111–73. Washington, D.C.: Congressional Quarterly.

Carter, James E. Address to Congress, January 20, 1978. *Congressional Quarterly Almanac 1978* 34: 23-E–33-E. Washington, D.C.: Congressional Quarterly.

Congress Approves $18.7 Billion Tax Cut. *Congressional Quarterly Almanac 1978* 34: 219–48. Washington, D.C.: Congressional Quarterly.

Congress Enacts President Reagan's Tax Plan. *Congressional Quarterly Almanac 1981* 37: 91–104. Washington, D.C.: Congressional Quarterly.

Congress Enacts Sweeping Overhaul of Tax Law. *Congressional Quarterly Almanac 1986* 42: 491–524. Washington, D.C.: Congressional Quarterly.

Crain, W. Mark, Thomas H. Deaton, and Robert D. Tollison. 1978. Macroeconomic Determinants of the Vote in Presidential Elections. *Public Finance Quarterly* 6: 427–38.

Davis, Edward. 1997. The Evolution of Federal Spending Controls: A Brief Overview. *Public Budgeting and Finance* 17: 10–24.

Deficit-Reduction Bill Narrowly Passes. *Congressional Quarterly Almanac 1993* 49: 107–39. Washington, D.C.: Congressional Quarterly.

De Long, J. Bradford. 1996. Keynesianism, Pennsylvania Avenue Style: Some Consequences of the Employment Act of 1946. *Journal of Economic Perspectives* 10: 41–53.

Doyle, Richard, and Jerry McCaffery. 1991. The Budget Enforcement Act of 1990: The Path to No-Fault Budgeting. *Public Budgeting and Finance* 11: 25–40.

Economic Policy. *Congressional Quarterly Almanac 1986* 42: 489–90. Washington, D.C.: Congressional Quarterly.

Employment Act of 1946. U.S. Public Law 79-304, 79th Cong., 2d Sess., 20 February 1946.

Fair, Ray C. 1978. The Effect of Economic Events on Votes for President. *Review of Economics and Statistics* 60: 159–73.

Full Employment and Balanced Growth Act of 1978. Public Law 95-523, 95th Cong., 2d Sess., 27 October 1978.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Higgs, Robert. 1987. *Crisis and Leviathan: Critical Episodes in the Growth of American Government.* New York: Oxford University Press.

Inside the Tax-Cutting Bill. 1997. *Congressional Quarterly Weekly Report,* September 27, pp. 2331–38. Washington, D.C.: Congressional Quarterly.

Keech, William R. 1995. *Economic Politics: The Costs of Democracy.* New York: Cambridge University Press.

Kuklinski, James H., and Darrell M. West. 1981. Economic Expectations and Voting Behavior in United States House and Senate Elections. *American Political Science Review* 75: 436–47.

Kydland, Finn E., and Edward C. Prescott. 1977. Rules Rather than Discretion: The Inconsistency of Optimal Plans. *Journal of Political Economy* 85: 473–92.

Long, James E. 1997. Progressivity and the Tax Reform Act of 1986: A Reexamination and Additional Evidence. *Public Finance Quarterly* 25: 44–57.

MacRae, C. Duncan. 1977. A Political Model of the Business Cycle. *Journal of Political Economy* 85: 239–63.

McCallum, Bennett T. 1978. The Political Business Cycle: An Empirical Test. *Southern Economic Journal* 44: 504–15.

Nordhaus, William D. 1975. The Political Business Cycle. *Review of Economic Studies* 42: 169–90.

Oak, Dale P. 1995. An Overview of Adjustments to the Budget Enforcement Act Discretionary Spending Caps. *Public Budgeting and Finance* 15: 35–53.

Overselling the Surplus. 1998. *Economist,* May 30, pp. 23–24.

Paldam, Martin. 1981. An Essay on the Rationality of Economic Policy: The Test-Case of the Electional Cycle. *Public Choice* 37: 287–305.

Persson, Torsten, and Lars E. O. Svensson. 1989. Why a Stubborn Conservative Would Run a Deficit: Policy with Time-Inconsistent Preferences. *Quarterly Journal of Economics* 104: 325–45.

Reagan, Ronald. Address to Congress, February 18, 1981. *Congressional Quarterly Almanac 1981* 37: 15-E–18-E. Washington, D.C.: Congressional Quarterly.

Rubin, Alissa J. 1997. For Majority in House, Agreement Was a Good Deal for Both Parties. *Congressional Quarterly Weekly Report,* May 24, pp. 1182–84. Washington, D.C.: Congressional Quarterly.

Schick, Allen. 1992. Deficit Budgeting in the Age of Divided Government. In *Fiscal Politics and the Budget Enforcement Act,* edited by Marvin H. Kosters, pp. 20–36. Washington, D.C.: AEI Press.

Stigler, George. 1973. General Economic Conditions and National Elections. *American Economic Review* 63: 160–67.

Weisman, Jonathan. 1997. Experts Calculate Rate of Pain from "Taxpayer Relief Act." *Congressional Quarterly Weekly Report,* December 20, pp. 3120–22. Washington, D.C.: Congressional Quarterly.

Acknowledgments: I thank William R. Keech, Bruce Yandle, two anonymous referees, and the editor of this journal for helpful comments. I also thank Scott Moody of the Tax Foundation for providing some of the data used in this article. Any remaining errors are my own.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Ways of John Gray

A Libertarian Commentary

DANIEL B. KLEIN

In writing about classical liberal ideas and libertarian reforms, John Gray uses various terms. Besides "classical liberalism" and "libertarianism," he uses "neo-liberalism," "market liberalism," "paleo-liberal," "the New Right," "the market," "free market ideology," and, most broadly, "the Enlightenment Project." To understand why a libertarian such as myself might feel an urge to comment on Gray's writings, consider the following statements in which Gray disparages libertarianism:

> The argument of *Beyond the New Right* [Gray 1993b] . . . suggested that the historic inheritance of liberal institutions and practice was endangered, not as hitherto by left-liberal policy and ideology, but by the market fundamentalism sponsored by the New Right. (1995a, vii)
>
> The libertarian condemnation of the state and celebration of the free market is a recipe for social breakdown and political instability. (1997, 133)
>
> The celebration of consumer choice, as the only undisputed value in market societies, devalues commitment and stability in personal relationships and encourages the view of marriage and the family as vehicles of self-realization. The dynamism of market processes dissolves social hierarchies and overturns established expectations. Status is ephemeral, trust frail, and contract sovereign. This dissolution of communities promoted by market-driven labour mobility weakens, where it does not entirely destroy, the informal

Daniel B. Klein is an associate professor of economics at Santa Clara University.

The Independent Review, v.IV, n.1, Summer 1999, ISSN 1086-1653, Copyright © 1999, pp. 63–89

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

social monitoring of behaviour which is the most effective preventive measure against crime. (1995a, 99)

The tendency of market liberal policy is significantly to reinforce subjectivist and even antinomian tendencies which are already very powerful in modernist societies and thereby to render surviving enclaves and remnants of traditional life powerless before them. (1995a, 99)

The desolation of settled communities and the ruin of established expectations will not be mourned and may well be welcomed by fundamentalist market liberals. For them, nothing much of any value is threatened by the unfettered operation of market institutions. Communities and ways of life which cannot renew themselves through the exercise of consumer choice deserve to perish. The protection from market forces of valuable cultural forms is a form of unacceptable paternalism. And so the familiar and tedious litany goes on. (1995a, 100)

In this paleo-liberal or libertarian view, the erosion of distinctive cultures by market processes is, if anything, to be welcomed as a sign of progress toward a universal rational civilization. Here paleo-liberalism shows its affinities not with European conservatism but with the Old Left project of doing away with, or marginalizing politically, the human inheritance of cultural difference. . . . This perspective is a hallucinatory and utopian one. (1995a, 102)

Market liberal ideologists will argue that the stability of a market society is only a matter of enforcing its laws. This thoroughly foolish reply need not detain us. (1995a, 102)

Communities need shelter from the gale of market competition, else they will be scattered to the winds. (1995a, 112)

At present, the principal obstacle we face in the struggle to renew our inheritance of liberal practice is the burden on thought and policy of market liberal dogma. (1995a, 113)

It is in social policy, however, that the errors of unrestrained neo-liberalism are most egregious. (1993b, 53)

Conservative government has the responsibility of protecting and renewing the public environment without which the lifestyle of market individualism is squalid and impoverished. Conservative individualists, unlike their liberal and libertarian counterparts, recognise that the capacity for unfettered choice has little value when it must be exercised in a public space that—like many American cities—is filthy, desolate, and dangerous. (1993b, 60)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> Liberal ideologues, in the nescience of their rationalist conceit, suppose that they can answer the question posed by the greatest twentieth-century Tory poet: what are days for? These ideologues have still to learn that, when local knowledge is squandered in incessant self-criticism, people realise that
>
> > solving that question
> > Brings the priest and the doctor
> > In their long coats
> > Running over the fields
>
> (Gray 1993b, 53 [quoting Philip Larkin's poetry])

Gray's vituperation is especially remarkable because Gray was once a classical liberal. Although he did not begin as a classical liberal, he apparently moved in that direction during his thirties. For years, he contributed to the intellectual refinement and social cause of classical liberalism. He wrote books on John Stuart Mill, on F. A. Hayek, and on the history of liberalism. The back cover of his *Beyond the New Right* (1993b) contains the statement that "for over a decade [Gray] has been associated with the ideas and think-tanks of the New Right." In the United States he worked with libertarian or classical liberal organizations, including the Institute for Humane Studies, the Cato Institute, the Liberty Fund, and the Social Philosophy and Policy Center. In Britain he worked with the Institute of Economic Affairs, which in 1989 published his classical liberal booklet *Limited Government: A Positive Agenda*. But early on, Gray's work had shown a definite discomfort with classical liberal ideology, and that discomfort evolved into harsh denunciation.

I came to read Gray's books in the course of researching a project on ideological migration. Gray is significant because he migrated far and especially because, subsequent to his more classical liberal phase, he migrated in an uncommon direction—from belief in small government to belief in not-so-small government. In researching Gray for the ideological migration project, I found that he habitually argued in certain ways. Once I had discerned his characteristic ways, reading his work became much easier.

I present here a memorandum on the ways of John Gray, which takes the form of a broadside against his writings. Although I set myself up as Gray's opponent, I do so with significant misgivings. I share what is perhaps most fundamental in this thought—an agonistic attitude, as he aptly puts it, about political philosophy and about liberalism in particular (Gray 1993a, chap. 6; 1995a, chap. 6; 1996, chap. 6). Also, I admire his wide learning, his daring, and his industriousness. Yet I feel that he has been intellectually irresponsible in ways that damage the cause of good policy reform. My aim is to expose and counteract certain regrettable themes and rhetorical tactics in his work. The ways of Gray that I will treat are as follows:

- Gray habitually sets up a straw man and then knocks it down. He often neglects to specify whom or what he is attacking.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

- Gray often attributes an extreme brittleness to his opponent's ideas, insisting that as soon as any ambiguity or incompleteness is identified, the entire body of ideas shatters. Yet Gray does not hold his own ideas to the same extreme standard for definitiveness and completeness.
- In many cases when Gray does identify the opposition, he flagrantly misrepresents it. He presents citations and truncated quotations to signify ideas that are quite at variance with what the sources are really saying. (I will consider in particular his misrepresentation of Hayek.)
- Gray often casts the opposition in hyperbolic terms, turning his opponent into an apocalyptic bugaboo.

Two themes in Gray's writings to which I call special attention are Gray's hostile view of the United States and his elitism.

The Liberty Maxim and Its Limitations

Gray has always opposed the foundationalist and rationalist strains in classical liberal thought. Finding the same antipathy in Hayek's writings, he praised Hayek in 1984 as follows:

> We find in Hayek a restatement of classical liberalism in which it is purified of errors—specifically, the errors of abstract individualism and uncritical rationalism—which inform the work of even the greatest of the classical liberals and which Hayek has been able to correct by absorbing some of the deepest insights of conservative philosophy. (1984, viii)

As Gray began his turn away from classical liberalism, he began using charges of rationalism, foundationalism, and fundamentalism to flog classical liberalism. This maneuver, which he has employed regularly since 1989, depends on constructing a straw man and on attributing a false brittleness to the victim. Before considering examples, let us explore the significance and relevance of foundationalism and rationalism in libertarian and classical liberal thought.

The central idea of libertarianism is liberty—the maxim of private property and freedom of consent and contract. But the maxim has limitations of several kinds.

First, it is sometimes ambiguous. The terms of consent and the rights inhering in property are sometimes unclear and indeterminate. Consider the following gray areas: the unsightliness of a neighbor's house; unpleasant noises; the basis of consent by the young, the senile, and the mentally retarded; issues relating to the unborn fetus; the tacit terms of ongoing relationships, including employment and marriage; the continuum that spans private voluntary agreement and coercive local government. The maxim also is ambiguous about whether the taxation to finance

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a minimal state ought to be deemed coercive and in violation of liberty. Ambiguities abound.

Second, the maxim is incomplete. It stipulates no rules to govern the use of government resources; it is silent on ten thousand issues of public administration. Given that the government imposes taxes and raises revenue, the maxim of liberty, by itself, does not say whether that revenue may be used for welfare benefits. Where we believe that government resources should be privatized, it fails to tell us how and how fast to privatize. It does not instruct us about meting out punishment and enforcing restitution. Incompleteness abounds.

Third, in some cases, abiding by the maxim is undesirable. A policy maker with the power to rush toward liberty may be unwise to do so. Piecemeal steps in the direction of liberty, such as the deregulation of the U.S. savings-and-loan industry in the 1980s, may be unwise. Should all governments do nothing to control air pollution in Los Angeles today? Should the government not grant eminent-domain powers in the construction of a particular highway today? Should all levels of government allow a free market in machine guns and bombs? Instances of undesirability abound.

Fourth, libertarians think the desirability of liberty is much more frequent and much more decisive than current policy admits, and they oppose high taxes and the welfare state. But no body of argument provides an authoritative justification, or "rational foundation," for libertarian reform; no body of argument represents fundamental truths from which the validity of one's libertarian position can be derived.

Gray reminds us again and again that libertarianism has these four limitations. What are objectionable are his claims, first, that all libertarian theorists deny these limitations and, second, that the limitations make libertarianism meaningless and absurd.

Gray Sets Up a Straw Man

The following statements exemplify Gray's claims that classical liberalism or libertarianism denies the limitations just identified:

> The classical liberal idea that our liberties, negative and positive, can be specified, once and for all in a highly determinate fashion, is a mere illusion. (1993b, 82)

> This species of political rationalism . . . represents political reasoning as an application of first principles of justice or rights. . . . It supposes that the functions and limits of state activity can be specified, once and for all, by a theory, instead of varying with the history, traditions, and circumstances that peoples and their governments inherit. It demands of political discourse a determinacy in its outcomes and a certainty in its foundations that it does not and never can possess. (1993b, xii)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> Traditional varieties of liberalism are all exemplars of conceptions of rational choice. They are also all exemplars of a universalist anthropology for which cultural difference is not an essential but only an incidental and transitional attribute of human beings. (1995a, 66)

> In all of its varieties, traditional liberalism is a universalist political theory. Its content is a set of principles which prescribe the best regime, the ideally best institutions, for all mankind. (1995a, 64)

> Classical liberalism, or what I have termed market fundamentalism, is, like Marxism, a variation on the Enlightenment project, which is the project of transcending the contingencies of history and cultural difference and founding a universal civilization that is qualitatively different from any that has ever before existed. (1995a, 100)

> The kinship of market fundamentalism with classical Marxism is evident. . . . Both are forms of *economism* in that their model of humankind is that of *homo economicus* and they theorize cultural and political life in the reductionist terms of economic determinism. (1995a, 101)

> My focus here has been on the specious claims of paleo-liberal ideology, in which individual choice is elevated to the supreme value and at the same time emptied of all moral significance. (1995a, 118)

> The danger of the neo-liberalism that has lately come to dominate conservative thinking is the danger of utopianism—the belief or hope that the predicament in which people find themselves, in which goods are not always combinable and sometimes depend upon evils, and in which the elimination of one evil often discloses another, can somehow be transcended. This was the danger inherent in the domination of conservative thought by the ideology of the New Right—the dangerous delusion that contemporary problems could be conjured away, in their entirety and presumably forever, by the resurrection of the theorisings of the Manchester School of *laissez-faire* liberalism. (1993b, 65)

Young Randians—adolescent boys and girls searching for a simple salvation—may discover libertarianism and neglect, or even deny, its limitations. But Gray's assault is not aimed at seventeen-year-olds. Among the condemned are leading libertarian thinkers—indeed, all thinkers and classical liberal thinkers, including not only Ayn Rand, Murray Rothbard, and Robert Nozick but also Adam Smith, William Graham Sumner, Ludwig von Mises, Milton Friedman, and F. A. Hayek.

Many classical liberals have shunned precepts of "natural law" and "natural rights" and have in no way pretended to possess, or even hoped for, an authoritative "rational foundation" for their views. Hayek warned against the pitfalls of rationalism and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

foundationalism, shunned simple maxims such as laissez-faire, called attention to ambiguities, incompleteness, and undesirabilities, and argued against a narrow conception of the individual as a unified utility maximizer.

Gray's Brittleness Ploy

The four limitations of libertarianism are not philosophically damaging because the same limitations—ambiguity, incompleteness, undesirability, and lack of foundation—mark all rival political philosophies as well. A political philosophy—an agenda for government reform and a supporting body of argument—is bound to fall short of the qualities that seventeen-year-olds seek. Yet Gray pretends that classical liberal thought depends on being a brittle system of that sort. He supposes that ambiguity, incompleteness, undesirability, and lack of foundation are sufficient to shatter classical liberal thought. He argues as though, so long as there is a twilight, there is no meaningful distinction between day and night. Gray recognizes that the same limitations mark his own thought. Why then don't they undermine his own arguments as well?

The following statements exemplify Gray's false attribution of brittleness to classical liberal or libertarian thought:

> The objection to negative liberty, taken in and of itself, is that its content is radically indeterminate. (1993b, 78)

> This indeterminacy in the very notion of negative liberty spells ruin for the classical liberal project of stating a principle—Spencer's principle of Greatest Equal Freedom, say, or J. S. Mill's "one very simple principle" about not restraining liberty save where harm to others is at issue—which can authoritatively guide thought and policy on the restraint of liberty. Because we cannot identify "the greatest liberty," principles which speak of maximising it are empty. To talk, as classical liberals still do, of minimising coercion by maximising negative liberty, is merely to traffic in illusions. (1993b, 78)

> Classical liberal conceptions of the role of the state that are spelt out in terms of a principle of *laissez-faire* suffer from the disability that that principle is itself practically vacuous. . . . The ideal of *laissez-faire* is only a mirage. (1993b, 6)

> Theories of the minimum state, therefore, are worse than uninformative; they are virtually empty of content. (1993b, 6)

> In truth, because their content is open-ended and their very definition uncertain, the negative rights in terms of which the minimum state is theorised confer upon [the minimum state] all of the indeterminacy which characterises my own account of the proper functions of government. (1993b, 6)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The brittleness ploy shows at least a lack of graciousness on Gray's part. Even when an opponent's case has weaknesses, they do not subvert strengths that stand independently. Consider the use of the term *rights* in David Boaz's recent book, *Libertarianism: A Primer* (1997). Boaz writes:

> The corollary of the libertarian principle that "every person has the right to live his life as he chooses, so long as he does not interfere with the equal rights of others" is this: *No one has the right to initiate aggression against the person or property of anyone else.* This is what libertarians call the nonaggression axiom, and it is a central principle of libertarianism. (Boaz 1997, 74)

I agree with Gray that it is misleading to speak in terms of axioms and corollaries and that, in referring to abstract maxims about what should be, it is not useful to speak in terms of rights (which Boaz elsewhere identifies as "natural rights"). I might fault Boaz for not paying more attention to the ambiguities, incompletenesses, and hard cases of his maxim. But such criticism would not detract greatly from his book. Most of the book is argumentation about the relative robustness of the libertarian maxim. The argumentation speaks of the role of property, consent, and contract, not only in achieving economic prosperity but also in affirming people's dignity, encouraging toleration of diverse lifestyles, generating trust in social relations, and vivifying civil society. Boaz's weak handling of the twilight does not destroy the value of his distinction between day and night, nor does it invalidate his argumentation in favor of one over the other. (And it is doubtful that a primer should dwell on the twilight.) Gray pretends that the whole of libertarian thought is a brittle doctrine critically dependent on the absence of twilight. Yet most of libertarian thought—including the writings of Thomas Paine, Thomas Jefferson, Lysander Spooner, Herbert Spencer, Albert Jay Nock, Rothbard, and other utopian liberal rationalist Enlightenment dogmatists—consists of day-versus-night discussions that weather Gray's unrelenting objection, "But there is a twilight!"

Chandran Kukathas comments on Gray's brittleness ploy:

> According to Gray, the content of negative liberty is "*radically* indeterminate." Now if by this he means that we cannot, from a principle enjoining respect for negative liberty, derive a definitive set of entitlements and prohibitions on individual and institutional conduct, he is perfectly correct. But I fail to see why this is a serious objection. Political theory does not end with the assertion of a set of principles; political argument and moral reasoning must still continue; principles have to be interpreted and interpretations have to be defended. Social theory generally is "indeterminate." We should indeed accept Aristotle's wise suggestion that

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

we not look for more precision than a subject will allow. (Kukathas 1992, 105; italics in original)

Gray's Misrepresentation of Adam Smith

Gray's writings are flawed both in their citation of supporting authorities and in their criticism of opposing authorities. Consider Gray's use of Adam Smith as a supporting authority.

Gray has always paid attention to the effects of commerce and market forces on manners and morals. As early as 1984, he began using Smith's authority in the following way: "In both Adam Smith and the neoconservatives it is suggested that the unregulated market or commercial society tends to produce a sort of mindless hedonism which renders it defenceless against more vital tyrannies" (1984, 131).

Gray's own attitude about the moral consequences of commercial society have flip-flopped. He has written, for example, that "the prejudice that markets promote egoism, while collective procedures facilitate altruism, is, if anything, the reverse of the truth" (1993b, 79). Since 1992, however, his portrayal of market processes as ravagers of cultural bonds and norms of decency has escalated, as shown by quotations already provided. "The market," he insists, scatters communities to the winds, makes "trust frail," "overturns established expectations," and unleashes crime. Gray seeks to protect communities from the "ravages" of the market (1995a, 181).

To support the ravages view, Gray has repeatedly called on Smith's authority (1984, 131; 1995a, 55, 98; 1997, 5). He does so most fully when he quotes *Lectures on Jurisprudence,* in which Smith describes the disadvantages of commercial society. After quoting Smith at length, Gray concludes with the following:

> Most of Smith's latter-day epigones seem nevertheless not to have taken to heart his wise summary and conclusion: "These are the disadvantages of a commercial spirit. The minds of men are contracted and rendered incapable of elevation, education is despised or at least neglected, and heroic spirit is almost utterly extinguished. To remedy these defects would be an object worthy of serious attention." These moral and cultural shortcomings of a commercial society, so vividly captured by one of its seminal theorists, figure less prominently, if at all, in the banal discourse of free market ideology. (1995a, 98)

One cannot deny that libertarian-liberal scholarship has paid insufficient attention to issues of conduct and community in commercial society. But one may fault Gray for his one-sided use of Smith's writings. Smith's discussion of "the influence of commerce on manners"—from which Gray amply quotes—begins as follows: "Whenever commerce is introduced into any country, probity and punctuality always

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

accompany it" (Smith 1978, 538). Smith provides a lengthy account of how frequent dealings and reputation encourage good conduct in commercial society. He rounds out the discussion by declaring:

> Whenever dealings are frequent, a man does not expect to gain so much by any one contract as by probity and punctuality in the whole, and a prudent dealer, who is sensible of his real interest, would rather chuse to lose what he has a right to than give any ground for suspicion. Every thing of this kind is [as] odious as it is rare. When the greater part of people are merchants they always bring probity and punctuality into fashion, and these therefore are the principal virtues of a commercial nation. (Smith, 539)

Only after expressing such optimism does Smith turn to the pessimistic elements, which he prefaces by stating, "There are some inconveniences, however, arising from a commercial spirit." Gray's account begins where Smith's optimism ends. Nowhere does Gray let on that Smith warmly praised commerce for promoting trust and good conduct. (For a discussion of Smith's views on morals and commercial society, see Shearmur and Klein 1999.)

Gray's Treatment of Hayek

As noted, Gray apparently moved toward classical liberalism while in his thirties. But he has always exhibited chameleon-like qualities. Jeremy Shearmur (1997) writes that "some of [Gray's] more recent work contains a fair bit of posturing and playing to the gallery." In his treatment of Hayek, Gray played up conservatism for the *Salisbury Review* in 1983 (reprinted in Gray 1993a). He was more enthusiastic about Hayek's liberalism and anti-statism when visiting the Institute for Humane Studies to write his book on Hayek (1984) and when sketching policy agendas for the Institute of Economic Affairs in 1989 and 1992 (reprinted in Gray 1993b). As political opinion shifted away from the market vanguard, and as Gray's prominence as an opinion maker increased, Gray—whether writing for the conservative Centre for Policy Studies or, in recent years, for Green and Labour auditors—anxiously denounced Hayek. Gray now portrays Hayek as a "neo-liberal ideologue" (1995a, 53) and a single-minded exponent of "the impersonal nexus of market exchange" (1993b, 52).

My View of Hayek

Hayek was candid about the ambiguities and incompleteness of his philosophy. He neither pretended to possess nor hoped to find an authoritative body of reasoning that one could claim to be a "rational foundation" for classical liberal positions. He was at ease with the twilight regions and the infinite regress of justification

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

(and of the self; see citations to Hayek in Klein 1999a). What he attempted in *The Constitution of Liberty* was not to give the desirable in law and government policy a definitive characterization, but to give it a fuller, more comprehensive, and more palatable characterization than others with similar sensibilities about the desirable had given it.

Yet, one feature of Hayek's approach does expose him to charges of rationalism: his concept of liberty always accords with his sensibilities about the desirable (desirable, that is, in a society that he imagines to be entertaining his proposals). Maintaining that the desirable always accords with liberty led him into convolutions about liberty being dependent on the absence of coercion by arbitrary acts, which is dependent on the rule of law, which is dependent on a standard of abstractness for rules and principles (see Hayek 1960, esp. 11, 142–44). The result was an arcane, abstract, and often unintelligible notion of liberty.

I prefer to use *liberty* in its Rothbardian sense (see Rothbard 1982)—property, consent, and contract—but I regard liberty merely as a maxim that exhibits the limitations set out earlier. Hayek admitted limitations with respect to ambiguity, incompleteness, and lack of foundation, but he resisted the idea that the desirable sometimes conflicts with liberty. Rothbard also held that the desirable always accords with liberty, but he molded the desirable to fit his idea of liberty, whereas Hayek molded liberty to fit his sensibilities about the desirable. My own approach is Rothbardian in its notion of liberty but Hayekian in its sensibility of desirable reform. Restrictions on the ownership of bazookas, for example, by my and Rothbard's lights, violate liberty, but in given circumstances may, by my but not Rothbard's lights, be desirable. Hayek would perhaps agree on the desirability, but also might see such restrictions as compatible with his notion of liberty.

The flaw in Hayek's *Constitution of Liberty,* however, is not fatal. At bottom, the issues on which Rothbardian and Hayekian judgments about the desirable might disagree, such as the bazooka issue, are not especially important. Rothbard and Hayek basically agree on desirable reform—they are both libertarians—and Hayek's book nicely advances the case for the common agenda.

Hayek's approach was, perhaps, appropriate to his circumstances. Had he taken up the more concrete, Rothbardian maxim of liberty, Hayek's deep anti-statism, acquired from von Mises, would have become more obvious and would have driven away many readers who were indeed moved by Hayek's arguments. Any way of conceptualizing a political philosophy will have similar problems—my preferred conceptualization, which readily admits the identified limitations, not excepted.

In his portrayal of Hayek's thought, Gray has flip-flopped in at least three respects: whether Hayek is a rationalist (Gray said no, then yes), whether Hayek is more a conservative or a libertarian-liberal (Gray has varied, depending on his audience), and whether Hayek's thinking is laudable (Gray said yes, then no).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Hayek a Rationalist?

When we speak of rationalism, we mean the conviction, aspiration, or intention to definitively characterize the desirable, or to give a final (metacultural) "rational" foundation for the desirability of whatever it is that one holds to be desirable. Rationalism is the denial or undue neglect of the limitations I have identified.

In 1981, Gray's article "Hayek on Liberty, Rights and Justice" was published in the academic journal *Ethics* (reprinted in Gray 1989). The article concentrates on the problem already raised, that Hayek set up "liberty" to fit the desirable. In Gray's characterization, Hayek's theory of liberty is "underdetermined": "The conceptual connections which hold between liberty and justice [or, the desirable] thus become, in Hayek's doctrine, relations between mutually constitutive concepts" (1989, 97; see also 91–92). The aligning of liberty with the desirable leads Gray to claim that Hayek's thinking had an element of rationalism: "The main interest of Hayek's work in social and political philosophy lies in his attempt to marry . . . the rationalist and the sceptical" (89). Gray notes that Hayek pretends neither to give rational foundation to his characterization of the desirable (90), nor that his vision of the desirable is appropriate (or takes the same forms) for all people (Gray 1989, 94). On the whole, Gray's article is academic and, compared to his other writings, reserved. It shows that Gray has always been preoccupied with points of philosophical form, rather than substance. His article does not deal with Hayek's vast body of rich argumentation for smaller government. It considers only Hayek's characterization of liberty and justice.

In 1983, Gray's article "Hayek as a Conservative" was published in the *Salisbury Review* (reprinted in Gray 1993a). There the portrayal of Hayek is more decisively that of an anti-rationalist:

> Most distinctive in Hayek's sceptical and Kantian theory of knowledge, however, is his insight that all our theoretical, propositional or explicit knowledge presupposes a vast background of tacit, practical and inarticulate knowledge. Hayek's insight here parallels those of Oakeshott, Ryle, Heidegger, and Polanyi; like them he perceives that the kind of knowledge that can be embodied in theories is not only distinct from, but also at every point dependent upon, another sort of knowledge, embodied in habits and dispositions to act. (Gray 1993a, 34)

> We can never know our own minds sufficiently to be able to govern them, since our explicit knowledge is only the visible surface of a vast fund of tacit knowing. Hence the rationalist ideal of the government of the mind by itself is delusive. How much more of a mirage, then, is the ideal of a society of minds that governs itself by the light of conscious reason. The myriad projects of modern rationalism—constructivist rationalism, as Hayek calls it—founder

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> on the awkward fact that conscious reason is not the mother of order in the life of the mind, but rather its humble stepchild. All of the modern radical movements—liberalism after the younger Mill as much as Marxism—are, for Hayek, attempts to achieve the impossible. (Gray 1993a, 35)
>
> Hayek's criticism echoes a distinguished line of antirationalist thinkers. (Gray 1993a, 36)
>
> [Hayek's] chief importance, I think, is that he has freed classical liberalism from the burden of an hubristic rationalism. (Gray 1993b, p. 37)

In Gray's 1984 book on Hayek, the anti-rationalism is still uppermost (as the quotation from the preface, provided earlier, indicates). Gray does find in Hayek's thought "a conflict between its rationalist and its sceptical aspects" (1984, 139), but he concludes:

> None of these revisions compromises the central insights of Hayek's research programme—that social institutions emerge as the unintended consequence of human actions, and are fruitfully to be conceived as vehicles or bearers of tacit social knowledge. . . . Hayek liberates contemporary inquiry from the dead weight of the superseded intellectual tradition of constructivist rationalism. (Gray 1984, 140; see also 114, 130)

In Gray's later writings, in which Hayek is repudiated, Hayek is suddenly transformed into a rationalist, with no explanation of Gray's change of mind. Gray claims that the liberalism of Hayek (and others) "turns on a conception of rational choice" (1996, 8; see also 1995a, 66). Hayek's treatment of the idea of social justice, earlier praised by Gray as "devastating" (1993b, 36; 1993a, 33), becomes a "rationalistic critique" (1995a, 187 n. 20), but Gray does not elaborate or provide any page reference directing us to the rationalist element in Hayek's writing. As Shearmur has noted, Gray's attitude toward Hayek's social-justice critique "shifts from earlier fulsome praise to condemnation . . . without discussion of the respects in which he now thinks Hayek was incorrect." In his 1997 collection, Gray writes of the "crassly rationalistic terms" of "Hayekian theory" (37) and denounces the New Right for being influenced by "classical liberal rationalism, as that has been revised in our time by such thinkers as Popper and Hayek" (6).

Hayek: Conservative, Liberal, or Both?

In his 1981 article in *Ethics,* Gray did not dwell on Hayek's ideological affinities; he did declare that "Hayek's writings compose one of the most ambitious efforts at a liberal ideology made this century" (1989, 89), and he characterized Hayek as a liberal (100), not a conservative.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In "Hayek as a Conservative" (*Salisbury Review*, 1983), Gray wrote that Hayek's thought "embodies the best elements of classical liberalism" (1993a, 32; see also 33, 38), but "at the same time it derives from some of the most profound insights of conservative philosophy, and puts them in an original and uncompromising fashion" (1993a, 32).

In his 1984 book on Hayek, Gray again portrayed Hayek as a mixture, but, in this case, he emphasized the classical liberalism. Gray concluded that Hayek "returns thought about man and society to the great tradition of the Scottish Enlightenment, and opens up to us the abandoned road to genuine knowledge of man and of the conditions of his freedom and welfare first laid down by the thinkers of classical liberalism" (1984, 140; see also viii, 114, 130, 139).

Subsequently, Gray's writings became steadily more statist. In "The Moral Foundations of Market Institutions," first published with critical commentaries in 1992 by the Institute of Economic Affairs, Gray cited Hayek approvingly while developing a rather activist policy agenda. At one point Gray suggested the goal of "reduction of state expenditures to around a quarter of national product, as advocated by Hayek" (reprinted in Gray 1993b, 121). Did Hayek actually advocate that government spend a quarter of national product? Gray refers to a page on which Hayek discusses taxation in these words:

> What is needed is a principle that will limit the maximum rate of direct taxation in some relation to the total burden of taxation. The most reasonable rule of the kind would seem to be one that fixed the maximum admissible (marginal) rate of direct taxation at that percentage of the total national income which the government takes in taxation. This would mean that if the government took 25 per cent of the national income, 25 per cent would also be the maximum rate of direct taxation of any part of individual incomes. (Hayek 1960, 323)

Clearly, Hayek was merely illustrating his point about the relationship between marginal and average tax rates with a numerical example, not advocating 25 percent as a desirable rate. Gray misrepresented Hayek, perhaps in an attempt to smooth the transition from his former enthusiasm for Hayekian ideas to his more statist positions.

Soon, however, Gray began to repudiate Hayek's thinking. In the introduction to his 1993 collection *Beyond the New Right*, he wrote that "[in questioning the] dogmas of modernism . . . the conservative thinker will find most sustenance in the thought not of Hayek or Popper but of Oakeshott and Polanyi" (1993b, xv; see also xiii). Not long afterward, Gray wrote that "neither of them [Hayek and Popper] belonged to a recognizable tradition of British or European *conservative* thought" (1997, 187 n. 3; Gray's italics). Gray began to refer to "the free market libertarianism of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Herbert Spencer and F. A. Hayek" (1997, 74) and "neo-liberal ideologues such as Hayek" (1995a, 55).

Gray charges Hayek with "technological hubris" (1993b, 144) and a devotion to ideas of progress:

> The idea of progress reinforces the restless discontent that is one of the diseases of modernity, a disease symptomatically expressed in Hayek's nihilistic and characteristically candid statement that "Progress is movement for movement's sake." No view of human life could be further from either Green thought or genuine conservative philosophy. (Gray 1993b, 139)

"Progress is movement for movement's sake"—a nihilistic remark, we are told without further discussion. (Gray even fails to provide the page reference for the quotation.) Here, from Hayek, is the full context of those six words:

> It is knowing what we have not known before that makes us wiser men.
>
> But often it also makes us sadder men. Though progress consists in part in achieving things we have been striving for, this does not mean that we shall like all its results or that all will be gainers. And since our wishes and aims are also subject to change in the course of the process, it is questionable whether the statement has a clear meaning that the new state of affairs that progress creates is a better one. Progress in the sense of the cumulative growth of knowledge and power over nature is a term that says little about whether the new state will give us more satisfaction than the old. The pleasure may be solely in achieving what we have been striving for, and the assured possession may give us little satisfaction. The question whether, if we had to stop at our present stage of development, we would in any significant sense be better off or happier than if we had stopped a hundred or a thousand years ago is probably unanswerable.
>
> The answer, however, does not matter. What matters is the successful striving for what at each moment seems attainable. It is not the fruits of past success but the living in and for the future in which human intelligence proves itself. Progress is movement for movement's sake, for it is in progress of learning, and in the effects of having learned something new, that man enjoys the gift of his intelligence. (Hayek 1960, 41)

Could anyone honestly read this passage as a profession of idealistic faith in progress? Does Hayek express a nihilistic will to advance progress, even if it means scattering communities to the winds? (And by the way, in what sense is the remark quoted by Gray "characteristically candid" of Hayek?)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

For his statement that Hayek "seems to subscribe to a doctrine of historical progress which . . . cannot be endorsed by any twentieth-century conservative" (1993a, 38), Gray provides no documentation. He claims that Hayek "generalizes from the English experience to put forward a grandiose theory of the spontaneous emergence of market institutions that is reminiscent in its unhistorical generality of Herbert Spencer and Karl Marx at their most incautious" (1995a, 40; see also 1998a, 8). One expects a scholar to support such a grand claim with references, but Gray provides merely a footnote that refers to Hayek's *Fatal Conceit* without a page reference. He adds that "Hayek's treatment of the emergence of market institutions in England as paradigmatic is evidenced in many of his earlier works" (1995a, 186 n. 8), again without providing any reference. Gray would be hard-pressed to make good on the assertion.

Is Hayekian Thinking Laudable?

In his earlier works, Gray clearly praised and favored Hayek's thought (especially 1984, the reprint in 1993a, and the two IEA publications reprinted in 1993b). But, as already noted, Gray later repudiated Hayekian thinking. Hayek becomes, in Gray's prose, emblematic of nasty market forces and the turmoil they generate. Gray refers to the "Hayekian" privatization in Russia that has yielded "a sort of anarcho-capitalism of competing mafias" (1995a, 57). He refers to "the wager on indefinite economic growth and unfettered market forces" as "Hayek's wager" (1995a, 88). He speaks of the "view of society, explicit in Hayek and before him in Herbert Spencer, in which it is nothing but a nexus of market exchanges" (1995a, 101). "A society held together solely by the impersonal nexus of market exchanges, as envisaged by Hayek," declares Gray, "is at best a mirage, at worst a prescription for a return to the state of nature" (1993b, 52).

Does Gray attempt to support his new view of Hayek's thought? The only elaboration is a footnote (attached to this last quotation) in which he merely quotes the following words from Hayek: "The only ties which hold together the whole of a Great Society are purely 'economic' " (quoted in Gray 1993b, 180 n. 6). Again we must go to the source, in this case Hayek's *Mirage of Social Justice* (vol. 2 of *Law, Legislation and Liberty*):

> It is the great advantage of the spontaneous order of the market that it is merely means-connected and that, therefore, it makes agreement on ends unnecessary and a reconciliation of divergent purposes possible. What are commonly called economic relations are indeed relations determined by the fact that the use of all means is affected by the striving for those many different purposes. It is in this wide sense of the term "economic" that the interdependence or coherence of the parts of the Great Society is purely economic.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> The suggestion that in this wide sense the only ties which hold the whole of a Great Society together are purely "economic" (more precisely "catallactic") arouse[s] great emotional resistance. . . . It is of course true that within the overall framework of the Great Society there exist numerous networks of other relations that are in no sense economic. (Hayek 1976, 112)

Hayek was saying that the whole of a great society represents the pursuit of many different purposes. As any Hayek scholar knows, Hayek took pains to prevent the very misrepresentation that Gray perpetrates. Hayek's use of quotation marks around "economic" and his repeated mention of the "wide sense" with which he is using the term speak for themselves. Hayek often pointed out, as in the passage just provided, that all manner of nonmarket social organizations—families, churches, communities, clubs, friendships—coexist and thrive in a great society (see, for example, Hayek 1944, 42; 1948, 23; 1973, 46; 1960, 37; 1988, 37).

Final Remarks about Gray on Hayek

Although he tries to dissociate himself from Hayek, Gray continues to use insights he gained from Hayek. Even as he denounces Hayek, Gray tells us how "theories, at their best, can only remind us how little we know" (1993b, 65). He might have quoted Hayek: "The most important task of science might be to discover . . . [the] limits to our knowledge or reason" (Hayek 1988, 62). In announcing that "liberalism is to be regarded as a form of moral and political practice, a species of partisanship" (1989, 100), Gray might again have quoted Hayek: "Liberalism['s] aim, indeed, is to persuade the majority to observe certain principles" (Hayek 1960, 103). Articulating and endorsing Isaiah Berlin's view of man as "inherently unfinished and incomplete, as essentially self-transforming and only partly determinate" (Gray 1996, 9), Gray could have quoted Hayek's statement that "human decisions must always appear as the result of the whole of a human personality [which] cannot be reduced to something else" (Hayek 1952, 193). Arguing against "[the construction of] a critical morality, rationally binding on all human beings, and, as a corollary, the creation of a universal civilization" (1995a, 123), Gray could have quoted Hayek:

> Whether a new norm fits into an existing system of norms will not be a problem solely of logic, but will usually be a problem of whether, in the existing factual circumstances, the new norm will lead to an order of compatible actions. . . . A new norm that logically may seem to be wholly consistent with the already recognized ones may yet prove to be in conflict with them if in some set of circumstances it allows actions which will clash with others permitted by the existing norms. This is the reason why the Cartesian or "geometric" treatment of law as a pure "science of norms," where all

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> rules of law are deduced from explicit premises, is so misleading. (Hayek 1973, 105–6)

If Hayek could comment on Gray, he might echo something Karl Kraus once wrote: "X said disparagingly that nothing would remain of me but a few good jokes. That, at least, would be something, but unfortunately not even that will remain, for the few good jokes were stolen long ago—by X" (Kraus 1990, 45).

Prophecy and Apocalypse

Gray writes about current affairs with alarm. In the introduction to *Beyond the New Right* (1993b, xv), he states: "By returning to the homely truths of traditional conservatism . . . the ever-present prospect of disaster is staved off for another day." In *Endgames* (1997, 140), he writes that our "everyday freedoms to walk the streets without fear as well as democratic freedoms to challenge the increasingly anonymous institutions that rule our lives . . . are everywhere at risk." In *False Dawn,* "we stand on the brink [of] a tragic epoch, in which anarchic market forces and shrinking natural resources drag sovereign states into ever more dangerous rivalries" (1998a, 207).

But the peril would be even greater were we to adopt the policies of the "New Right," "the market," and so forth: "Western liberal projects as GATT," for example, "aim to subject all human cultures and communities to the hegemony of unfettered technology and of global market institutions." Such processes "cannot avoid desolating the earth's human settlements and its non-human environments" (1995a, 181). Attempting to construct "a market liberal utopia . . . has as its only sure outcome the spawning of atavistic movements that wreak havoc on the historic inheritance of liberal institutions" (1995a, 104). Policies such as open immigration undercut the common culture and must be rejected—"or else Beirut will be the likely fate" (1993b, 59).

Like Schumpeter, Gray believes that market liberalism plants the seeds of its own destruction: "Neo-liberalism itself can now be seen as a self-undermining political project. Its political success depended upon cultural traditions, and constellations of interests, that neo-liberal policy was bound to dissipate" (1995a, 87). In particular, "the political legitimacy of Western capitalist market institutions depends upon incessant economic growth; it is endangered whenever growth falters" (1993b, 152). Don't support the libertarian wing, Gray warns, because it is headed for a crash.

But doomsaying is somewhat self-limiting. To alarm people, one must make *specific* prophecies, and such prophecies are accountable to time. Gray has made some prophecies that he may well hope no one remembers:

> Any prospect of cultural recovery from the nihilism that the Enlightenment has spawned may lie with non-Occidental peoples, whose task will then be in part that of protecting themselves from the debris cast up by Western shipwreck. (1995a, 184)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> The likely result of the GATT agreements, if they are ever implemented, is not only ruin for Third World agriculture, with a billion or more peasants being displaced from the land in the space of a generation or less, but also—as Sir James Goldsmith has warned—class war in the advanced countries as wages fall and the return of offshore capital rises. (1995a, 114)

> In Britain, the Internet culture seems likely to remain as marginal, and perhaps as ephemeral, as that which grew up around manned spaceflight. Already the sites of space missions evoke less interest than those of the Pyramids. Similarly, in much less than a generation, the Internet will provoke stifled yawns rather than passionate controversy. For all its aura of futuristic novelty, the Internet worldview harks back to a culture of technological optimism that—at least in Britain—is irretrievably dated. (1997, 139–40)

> The United States, through the initiative of a Congress dominated by the free-market and religious Right, is now engaged in an experiment which is indeed unparalleled in any other country—that of withdrawing government from any responsibility for the welfare of society or the protection of communities and confining its functions to a repressive core having to do with the maintenance of law and order and the inculcation of certain supposedly basic national values. (1997, 111)

Gray claims the United States has "epidemic crime" (1997, 100; 1995a, 97). He writes, "American cities have ceased to be enduring human settlements and are approaching the condition of states of nature" (1997, 112). Meanwhile, the U.S. Bureau of Justice reports that the rate of serious violent crime (rape, robbery, aggravated assault, and homicide) has declined significantly since 1993 and is the lowest it has been in at least twenty-five years.

On the heels of the stock-market crash of the summer of 1998, Gray cranked up his prophecies and his long-practiced ploy of identifying processes that deeply involve state institutions—such as central banks, the International Monetary Fund, and governmental bodies that insure, guarantee, and restrict private lending and investment—as "the free market" or "capitalism":

> It is beginning to be accepted that global capitalism is in serious trouble. That has not always been so. When my book *False Dawn* was published this past spring, I expected it to be attacked. I was not disappointed. Most reviewers were incredulous. Some dismissed the claim that the global market was heading for a breakdown as an apocalyptic fantasy. Less than six months after *False Dawn* was published, that claim has been largely vindicated. The regime that a seemingly unshakable consensus took to be permanent has begun to fall apart. Soon, I have no doubt, it will be an irrecoverable memory.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> A year or so from now, it will be difficult to find a single person who admits ever having believed that a global free market is a sensible way of running a world economy. (Gray 1998b)

Less than three months after Gray's article appeared, the Dow-Jones industrial index had recovered fully and was achieving new highs.

Gray's Denigration of the United States

The United States looms large in Gray's work as the dystopia that Britain and Europe must avoid. He refers to

> a divergence between the United States and Europe—in their economies, their forms of social life and their public cultures—which is deep, growing and very probably irreversible. . . . Their differences were masked for a generation or more by the common interest they had in defeating Nazism and responding to the perceived danger of Soviet expansionism. In the post-communist period these differences are likely to be increasingly profound. (1997, 110)

"What is needed in Britain," he writes, is "a clear perception of the distinctively European values which we do not share with the Americans" (111). It is common for academics and intellectuals, including those in the United States, to disparage American culture. But Gray seems intent on inciting in Britain a truly invidious attitude toward America:

> The spectacle of American decline, and of America's slow, faltering but inexorable disengagement from Europe, should embolden opinion in all parties in Britain to make the choice it has always so far steadfastly avoided—that between our being an outpost of a fictitious Atlantic civilization and our real destiny as a European nation. (1997, 113)

Robert Skidelsky comments: "Gray's hatred of American capitalism is visceral" (1998, 12).

Gray's denunciations of the United States may strike one as an effort to foster an inferiority anxiety and a need to proclaim a distinctive British identity. I suspect that Gray has miscalculated the popular effect of his tactic. I suspect that British citizens on the whole do not find their selfhood in distinguishing a national character, to be called theirs, from the supposed national characters of other countries. I suspect that since World War II, and especially since the end of the Cold War, the trend in the West has been away from just that source of selfhood. I think the trend is healthy and something for all liberals to celebrate. Other institutions can serve much better than national identity in creating for people a rich, humane, and becoming sense of self. Westerners increasingly find their selfhood in their relationships with friends, families,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

lovers, colleagues, clients, and customers, personal rivals and competitors, church communities, chess and bridge and poker partners, softball and bowling mates, e-mail correspondents, and in their work, hobbies, and interests—literature, film, music, television, sports, and so on.

Gray, obviously, is uncomfortable with the trend. He expresses his discomfort this way: "For us, in Britain today, individualism and pluralism are an historical fate. We may reasonably hope to temper this fate, and thereby to make the best of the opportunities it offers us; we cannot hope to escape it" (1995a, 111).

According to Gray, individualism and pluralism are rampant in the United States, eviscerating whatever merit exists in the culture:

> The ongoing implosion of the United States, its wild oscillations between cultural introversion and messianic intervention, and its likely slide in coming decades into a kind of Brazilianization, are significant for Europeans, if at all, as evidences of the decline of the American model of unfettered individualism. (1997, 112)

> The result [in the United States] has been further social division, including what amounts to a low-intensity civil war between the races. As things stand, the likelihood in the United States is of a slow slide into ungovernability, as the remaining patrimony of a common cultural inheritance is frittered away by the fragmenting forces of multiculturalism. (1995a, 24)

It is hard to guess what Gray means by "individualism." It would not make sense to interpret the term to mean, specifically, libertarian policy. Gray often notes that America has high rates of crime and incarceration (1995a, 97; 1997, 112, 140–43; 1998a, 2, 113, 116–17). But these problems are to a large extent the result of highly unlibertarian policies that define victimless crimes, as Gray has acknowledged (1993b, 53). At present, approximately 20 percent of the state prison population and 60 percent of the federal inmates are incarcerated for drug violations, and drug prohibition generates a significant portion of all violent crime. Many of America's problems, including crime, bad schools, poor housing, and disorder in public places are no doubt caused in part by highly unlibertarian policies.

Misleading claims about the United States abound in Gray's work. Some claims—that over the past two decades the incomes of 80 percent of Americans "have stagnated or fallen" (1998a, 114), that free-market policies prevail in America (1998a, chap. 5), or that an "ideal of minimum government . . . animates the Washington consensus" (1998a, 200)—are so preposterous that to refute them would be to rehearse evidence well known to anyone commenting on the issues (for refutation of the poor-getting-poorer claim, see Cox and Alm 1999). Attempting to correct all of Gray's misleading claims about America would require a separate article.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

I do wish to note, however, in relation to three of Gray's statements, the significance of church participation in the United States. First, Gray portrays America as a place poor in meaningful community institutions, a country careening toward "Brazilianization." (What must Brazilians think about this expression?) Yet church participation is much higher in the United States than in virtually every European country (Iannaccone, Finke, and Stark 1997, 352; Iannaccone 1998, 1487). Gray (1998a, 126–27) acknowledges the vibrancy of America's churches, but cites it only as further evidence of atavistic American fundamentalism. Second, Gray declares that "individualism" and "the market competition" scatter communities to the winds, dissolve social bonds, and so on, but it has been argued that the chief cause of the success of U.S. churches is the complete lack of government intervention or subsidization (Iannaccone, Finke, and Stark 1997; Iannaccone 1998, 1489). Third, Gray disparages American "legalism" and trust in constitutional guarantees (Gray 1997, 21), citing the U.S. Constitution itself as a failed attempt to constrain government (Gray 1993b, 8), yet one robust explanation for the absence of government involvement in American churches is the First Amendment, which mandates a laissez-faire policy for religion (Iannaccone 1998, 1488).

Gray's Elitism

As mentioned previously, Gray maintains that a market-liberal society is self-undermining. The greatest danger, he writes, is allowing policy "to be formed on the tacit supposition that the cultural preconditions of the market can safely be left to look after themselves" (1993b, 64). To sustain individual freedom and civil society, it is not enough that the state affirm and uphold libertarian principles of property, consent, and tort (1993b, 64). Political stability and legitimacy depend on a broad appeal to the polity, a concordance with conceptions of fairness, cultural norms, and established expectations (1995a, 102). Here, as elsewhere, in criticizing libertarian policy, Gray shifts between claiming that it would be undesirable and claiming that it is not politically realistic.[1]

Gray writes about British society as if it were a club with its own peculiar rules: "Entry into civil society in Britain presupposes subscription to its norms. . . . This common culture may be reinforced by laws and policies which resist pluralism when pluralism threatens the norms of civil society itself" (1993b, 59).

Every club, of course, has its officers and directors. Sustaining the club depends on a class of "guardians of continuity in national life" (1995a, 87). They appreciate the club's multiple values and delicately tend its common culture. Club directors must

1. For instances, see 1993b, 6, 10, 25, 51, 63, 115. Chandran Kukathas (1992, 113) comments: "One of the reasons for [Gray's] rejection of classical liberalism, I suspect, is that he sees such a philosophy as having no capacity to play a practical role in the real world of politics."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

preserve "our institutional inheritance—that precious and irreplaceable patrimony of mediating structures and autonomous professions" (1995a, 87).

Gray's vision of the club and its guardians leads him to reject pragmatic libertarian policy. He opposes free international trade because the global market "has destroyed the idea of a career or a vocation on which our inherited culture of work was founded" (1997, 123). Regarding drug prohibition, Gray writes: "The siren voices now calling for drug legalization should be resisted by all who seek to preserve what still remains of Britain's inheritance of social cohesion and civilized government" (1997, 133). Regarding transportation policy: "The impact of the car on cities is to destroy them as human settlements in which generations of people live and work together"; hence the need for "the drastic curtailment within cities of the motor car" (1993b, 160). In many areas of public policy, Gray condemns libertarian policies because they upset traditional patterns of the club. In the unfettered market, "status is ephemeral" (1995a, 99).

Although Gray often notes the importance of voluntary mediating institutions, in the end he views the club as the nation and the club directors as government officials. His depiction of the nation-state as "the pre-eminent political form" (1996, 115) is most fully developed in his characterization of Isaiah Berlin's view of nationalism. Because that characterization conforms with the broad patterns of Gray's thought, and because Gray does not criticize what he conceives to be Berlin's view on the matter, I take Gray's words to represent his own views:

> The essential human unit in which man's nature is fully realized is not the individual, or a voluntary association which can be dissolved or altered or abandoned at will, but the nation; . . . it is to the creation and maintenance of the nation that the lives of subordinate units, the family, the tribe, the clan, the province, must be due, for their nature and purpose, what is often called their meaning, are derived from its nature and its purpose; and . . . these are revealed not by rational analysis, but by a special awareness, which need not be fully conscious, of the unique relationship that binds individual human beings into the indissoluble and unanalysable organic whole which Burke identified with society, Rousseau with the people, Hegel with the state, but which for nationalists is, and can only be, the nation, whatever its social structure or form of government. (1996, 105–6)

The book on Berlin is not the only place where Gray affirms politics and government. Elsewhere he writes of "[restoring] the primacy of the political" (1995a, 130), of the British state as "on balance a civilizing institution" (1997, 133), of "[enfranchising] all people as active citizens in a polity to which everyone can profess allegiance" (1993b, 59).

For a pragmatic libertarian such as myself, there are two interpretations of Gray's embrace of government as guardian and shepherd of the national club. One interpretation is that Gray simply does not see the reason to believe the following claims. First,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

as a basis for community or club identity, the state is severely flawed and inferior to voluntary and local institutions. Second, libertarian principles can be shared and sustained even when—especially when—government remains small (indeed, Gray [1993b, 35] says as much). Third, the need for trust in a large, mobile society is best met by voluntary institutions functioning within a libertarian legal framework (Klein 1997b, 1999b). Fourth, the basis for community and a fabric of life in a large, mobile society is best met by voluntary institutions functioning within a libertarian legal framework. Fifth, from where we stand, the principal reforms needed to advance individual dignity and individual responsibility are libertarian reforms (Klein 1997a). Sixth, neither in Britain nor in the United States is society coming apart at the seams.

Gray should admit these claims, or at least some of them. Because he does not, we are led to suspect that what troubles him is that he sees a world undergoing change, a world that has less and less use for the likes of John Gray. His agenda, at the core, seems to be to preserve the status of an elite governing class, in which he yearns to be a well-regarded and influential member. I take this view because it fits the patterns in Gray's work.

Why, for example, does Gray need to portray the United States in false and exaggerated terms? Because, as he rightly states, "The United States no longer possesses any recognizable common culture or a political class that could speak for such a culture" (1997, 112). Although public policy in America is not becoming more libertarian, the government is floundering badly as the leader of any national club or common culture. (Gray [1998b] writes amusingly of recent events: "The political class in the United States is currently preoccupied with whether serial fellatio constitutes a sexual relationship.") Every day, America becomes less and less a club.

But that development hardly foretells the social collapse that Gray luridly conjures. Gray needs to see an America in moral decay and disarray in order to maintain that society needs a governing class of traditional elites.

John Gray, Ideological Migrant

In his writings since *Beyond the New Right,* save the book on Berlin, Gray has demonstrated a heightened propensity to speak out of both corners of his mouth. At one point he condemns a policy or its supporters, but elsewhere those who oppose the policy. Discerning Gray's position becomes an exercise in weighing abuses. Shearmur (1997) has commented: "One of the strange features of Gray's writings is that he frequently offers us criticisms of various positions which he himself seems to have held until fairly recently, but which are then characterized in the most pejorative of terms, and as if only a fool or a knave could hold them." In a review of *False Dawn,* Skidelsky remarks on Gray's migration patterns:

> Gray's intellectual gyrations have become legendary. I am told he was a socialist in the 1970s. He was a Thatcherite in the 1980s. (The Iron Lady once said to me: "What ever happened to John Gray? He used to be one of us.") Then

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> he adopted the fashionable communitarianism. Judging from his latest book, he is what Marx would have called a "Reactionist"—with hope extinguished, but with a lively apprehension of disaster. He plays each role with passion and panache. But with so much here today, gone tomorrow, it is hard to know how seriously to take his arguments. (Skidelsky 1998, 11)

Gray is one of the more notable instances of an intellectual who has migrated away from classical liberalism. There is a certain notoriety in ideological migration. The back cover of *Beyond the New Right* (1993b) notes that Gray had been closely associated with the "New Right" but now he offers "a criticism of the ideological excesses of the New Right ideology and a radical critique of the New Right itself." The back cover of *Enlightenment's Wake* (1995a) says the book "stakes out the elements of John Gray's new position." The back cover of the second edition (1995b) of *Liberalism* notes that since the first edition (1986) "the author's views have changed significantly." The dust jacket of *False Dawn* (1998a) declares, "John Gray, a former supporter of the New Right, believes. . . ."

Ideological migrants are special and important cases. The intellectual shifts found in the work of ideological migrants can offer special insights into contending perspectives in public philosophy. To profitably examine an individual instance of ideological migration, it is important to gain an appreciation of the overall character of the person and his thought.

Libertarianism Doubly Cursed

Libertarianism does not stipulate that the levers of positive government power should be used in this way or that. Basically, it maintains that the levers shouldn't exist. Meanwhile, power influences public discourse by virtue of its being power. Governments control broadcast licenses and run schools, universities, radio programs, and the postal system. Government officials speak to journalists, who rely on their cooperation for news. Government makes news. It employs tens of millions in the United States and spends about 40 percent of national income. It taxes and regulates all, and, to varying extents, it subsidizes everyone. Anyone aspiring to eminence in polite society knows he had better not laugh out loud at conventional ideas about government. Anyone seeking invitations to sit and talk with power ought to avoid libertarian associations and rid himself of any cause for suspicion.

Libertarianism is a reform agenda cursed also by its own strength. The extent to which sensible libertarians regard the liberty maxim as well defined, widely applicable, and widely desirable is much greater than the extent to which those in other ideological camps regard their leading maxims as well defined, widely applicable, and widely desirable. In a sense, it is a curse to be the most in anything, because it arouses accusations of being entire. The cogency of the liberty maxim in the libertarian's mind often leads others to think that he regards it as an axiom that is always clearly defined,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

everywhere applicable, and always desirable. Critics such as Gray condemn libertarianism for pretending to possess airtight definitions, absolutes, and foundations, and therefore they attempt to dispose of libertarianism on formalistic grounds rather than engaging the substantive arguments offered for the reform agenda.

Libertarians might deter slights and hectoring by emphasizing the limitations of the liberty maxim and expressing its virtues in comparative terms.

References

Boaz, David. 1997. *Libertarianism: A Primer.* New York: Free Press.

Cox, W. Michael, and Richard G. Alm. 1999. *The Myth of Rich and Poor.* New York: Basic Books.

Gray, John. 1983. *Mill on Liberty: A Defence.* London: Routledge and Kegan Paul.

———. 1984. *Hayek on Liberty.* Oxford: Blackwell.

———. 1989. *Liberalisms: Essays in Political Philosophy.* London: Routledge.

———. 1993a. *Post-Liberalism: Studies in Political Thought.* London: Routledge.

———. 1993b. *Beyond the New Right: Markets, Government and the Common Environment.* London: Routledge.

———. 1995a. *Enlightenment's Wake: Politics and Culture at the Close of the Modern Age.* London: Routledge.

———. 1995b. *Liberalism.* 2d ed. Minneapolis: University of Minnesota Press.

———. 1996. *Isaiah Berlin.* Princeton: Princeton University Press.

———. 1997. *Endgames: Questions in Late Modern Political Thought.* Cambridge: Polity Press.

———. 1998a. *False Dawn: The Delusions of Global Capitalism.* London: Granta.

———. 1998b. Not for the First Time, World Sours on Free Markets. *Nation,* October 19.

Hayek, Friedrich A. 1944. *The Road to Serfdom.* Chicago: University of Chicago Press.

———. 1948. *Individualism and Economic Order.* Chicago: University of Chicago Press.

———. 1960. *The Constitution of Liberty.* Chicago: University of Chicago Press.

———. 1973. *Law, Legislation and Liberty.* Vol. 1, *Rules and Order.* Chicago: University of Chicago Press.

———. 1988. *The Fatal Conceit: The Errors of Socialism.* Chicago: University of Chicago Press.

Iannaccone, Laurence R. 1998. Introduction to the Economics of Religion. *Journal of Economic Literature* 36 (September): 1465–96.

Iannaccone, Laurence R., Roger Finke, and Rodney Stark. 1997. Deregulating Religion: The Economics of Church and State. *Economic Inquiry* 35 (April): 350–64.

Klein, Daniel B. 1997a. Liberty, Dignity, and Responsibility: The Moral Triad of a Good Society. *Independent Review* 1 (Winter): 325–51.

———, ed. 1997b. *Reputation: Studies in the Voluntary Elicitation of Good Conduct.* Ann Arbor: University of Michigan Press.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

———. 1999a. Discovery and the Deepself. *Review of Austrian Economics* 11:47–76.

———. 1999b. *Assurance and Trust in a Great Society.* FEE Occasional Paper no. 2. Irvington, N.Y.: Foundation for Economic Education.

Kraus, Karl. 1990. *Half-Truths and One-and-a-Half Truths.* Edited by Harry Zohn. Chicago: University of Chicago Press.

Kukathas, Chandran. 1992. Freedom versus Autonomy. A commentary on (and printed with) *The Moral Foundations of Market Institutions,* by John Gray. London: Institute of Economic Affairs.

Rothbard, Murray N. 1982. *The Ethics of Liberty.* Atlantic Highlands, N.J.: Humanities Press.

Shearmur, Jeremy. 1997. Gray's Progress. Manuscript, Department of Political Science, Australian National University.

Shearmur, Jeremy, and Daniel B. Klein. 1999. Good Conduct in a Great Society: Adam Smith and the Role of Reputation. Reprinted in Klein 1999b.

Skidelsky, Robert. 1998. What's Wrong with Global Capitalism? *Times Literary Supplement* no. 4956 (March 27): 11–12.

Smith, Adam. 1978. *Lectures on Jurisprudence.* Edited by R. L. Meek, D. D. Raphael, and P. G. Stein. New York: Oxford University Press.

JOURNAL OF DEMOCRACY

EDITORS
Marc F. Plattner
Larry Diamond

SINCE ITS INCEPTION IN 1990, the *Journal of Democracy* has become an influential international forum for scholarly analysis and competing democratic viewpoints. Focusing exclusively on democracy, the *Journal* monitors and analyzes democratic regimes and movements in scores of countries around the world. Each issue features a unique blend of scholarly analysis, reports from democratic activists, updates on news and elections, and reviews of important recent books. The Fifth Anniversary Issue (Volume 6, Number 1) featured Robert Putnam's "Bowling Alone," an essay on the decline of America's civil participation that has been widely cited in the national press by George Will, David Broder, and others.

Published quarterly in January, April, July, and October for the National Endowment for Democracy.

http://www.press.jhu.edu/press/journals/

Prepayment is required.
Annual Subscriptions: $30.00, individuals; $76.00, institutions. ***Foreign postage:*** *$4.30, Canada* & Mexico; $9.10, outside North America. **Single-issue prices:** $8.00, individuals; $20.00, institutions. Payment must be drawn on a U.S. bank in U.S. dollars or made by international money order. MD residents add 5% sales tax. For orders shipped to Canada add 7% GST (#124004946RT).

Send orders to: The Johns Hopkins University Press, P.O. Box 19966, Baltimore, MD 21211-0966, U.S.A. To order using Visa or MasterCard, **call toll-free 1-800-548-1784,** FAX us at **(410) 516-6968,** or email: **jlorder@jhupress.jhu.edu**

EX9

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

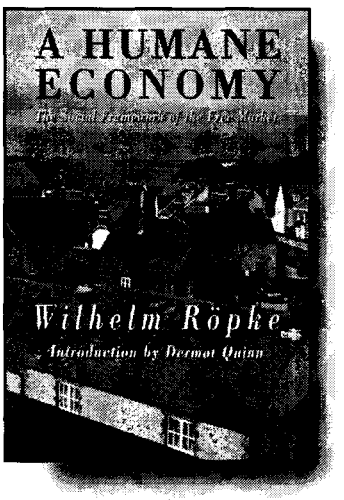
Recently Published by ISI BOOKS

A HUMANE ECONOMY

The Social Framework of the Free Market

WILHELM RÖPKE

With a new Introduction by DERMOT QUINN



The Wall Street Journal described *A Humane Economy* as "a seminar on integral freedom conducted by a professor of uncommon brilliance." Röpke is widely credited with orchestrating the post-World War II German economic recovery. While defending the free market, Röpke never neglected, as many economists do, the moral and social framework within which a free economy must operate. Here, in this new edition of his best known work, Röpke argues against separating economic theory from human behavior.

$24.95 cloth, 312 pp. • ISBN: 1-882926-24-2

"Röpke was a courageous and gifted thinker. This valuable volume is a classic presentation of Röpke's overall perspective."—**Israel M. Kirzner**, author, *The Economic Point of View*

"This book is an excellent starting point for the noneconomist reader who wishes to ... understand the moral underpinnings of the free market and what must be done to preserve it."—***First Things***

Wilhelm Röpke (1899-1966) was a Swiss economist and member of the Mont Pelerin Society who lectured at the graduate Institute for International Studies in Geneva. He was the author of more than twenty books, including *The Moral Foundations of Civil Society* and *The Social Crisis of Our Time*. **Dermot Quinn** is Associate Professor of History at Seton Hall University.

Available at bookstores, or by phone: **(800) 526-7022**, or fax: (302) 652-1760. Add 50¢ per book for postage. Order this and other titles securely from ISI BOOKS at **www.isi.org**.

ISI BOOKS *Perennial Ideas Shaping Our Age*

Intercollegiate Studies Institute • P.O. Box 4431 • Wilmington, DE 19807-0431

INRE41

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

REFLECTIONS

Doomsday Every Day

Sustainable Economics, Sustainable Tyranny

JACQUELINE R. KASUN

What will be the Clinton "legacy" is an intriguing question that comes up in various contexts. Certainly there have been unprecedented political and sexual scandals. The last American administration of the twentieth century will also be remembered for its devotion to feminism, environmentalism, multiculturalism, and one-worldism. Less well known, but arguably more world-changing in its effects, is the administration's dedication to the concept of sustainable development.

"Sustainable development" was the galvanizing theme of the 1992 Earth Summit in Rio de Janeiro. Based on the work of the Brundtland Commission in 1987, the goal of sustainable development has been enthusiastically promoted by the World Bank, the U.N. Development Fund, the U.N. Environment Programme, and the United Nations agencies promoting "world governance." It inspires President Clinton's Council on Sustainable Development. It has precipitated an avalanche of World Bank publications, such as the fourteen volumes of the *Environmentally Sustainable Development Proceedings* series of the 1990s, transforming untold acreages of forest into official paper. The phrase occurs frequently in the Chinese Communist press, usually in conjunction with news about the progress being made in the family planning program

Jacqueline R. Kasun is a professor emeritus of economics at Humboldt State University, Arcata, California, and editorial director of the Center for Economic Education, Bayside, California.

The Independent Review, v.IV, n.1, Summer 1999, ISSN 1086-1653, Copyright © 1999, pp. 91–106

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

(Hong 1998). The two topics—sustainable development and "family planning"—are linked throughout the literature.

Economists have struggled, without much success, to reconcile the various definitions that have been offered for "sustainable development." Herman Daly, an economist who has been involved since the beginning, says not to worry—lots of good ideas can't be defined (1996, 2). Daly, long associated with the World Bank, has written the seminal works in the field and is now joined by a host of authors producing textbooks for the college generation. Instruction in "sustainable economics" suffuses or replaces introductory economics courses at a number of institutions.

Whatever it is, sustainable development promises to transform life on this planet. The Rio conference produced agreements on everything from land-use planning (including "sustainable mountain development") and greenhouse gases to, of course, birth control. There were agreements on "human settlements," "sustainable agriculture," "biodiversity," and on and on in its "Agenda 21" and its Climate Convention and its Convention on Biological Diversity (*Agenda 21* 1992). Though Congress did not adopt the program, the Clinton administration proceeded as if it had, adopting new federal regulations and appointing a President's Council on Sustainable Development, made up of federal officials and prominent environmentalists, to pursue the agenda with vigor.

The Clinton Council on Sustainable Development has issued its own version of Agenda 21, declaring that we must "change consumption patterns," "restructure" education, "conduct a high-visibility public awareness campaign . . . to adopt sustainable practices," "create a network of conservation areas for each bioregion . . . based on public/private partnerships" (so much for private property), "realign social, economic and market forces . . . to embrace conservation," "use building codes [to secure] . . . environmental benefits," have "local . . . community planning . . . to develop a common vision," create "a council of . . . key stakeholders to . . . achieve sustainable management of forests," and "promote development of compact . . . neighborhoods" (good-bye, suburbs) (President's Council 1995).

Moreover, it decreed that "population must be stabilized at a level consistent with the capacity of the earth to support its inhabitants," whatever that capacity might be (President's Council 1995). The definitions may be elusive, but the program is uniform throughout the literature. It is to create massive, new bioregional conservation areas; control land use, consumption, and markets; re-educate the masses; and control population.

The Sierra Club announced at the U.N. Population Conference in Cairo in 1994 that "local activists" of the club in the United States were working "in a consensus-based . . . process to establish . . . thresholds for . . . population and consumption impact on the local ecoregion. . . . Addressing local carrying capacities will improve the quality of life for all and help develop sustainable communities" (Sierra Club 1994). The club didn't specify what action those local activists would take if it turns out that

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

local populations exceed carrying capacity, but, as will be shown, other devotees of sustainability have done so.

Since the Rio conference, more than 130 countries have created new bureaucracies to implement Agenda 21 and its requirements for sustainable development, according to the Earth Council, whose head is Maurice Strong, director of the Rio conference and now assistant secretary general of the United Nations (Earth Council 1997). Many local and regional compacts for sustainable development exist in the United States, stretching from Florida through Missouri to Santa Cruz and Humboldt County, California. Henry Lamb of the Environmental Conservation Organization has described some of them, including the statewide plans for Florida and Missouri (1998).

Sustained by foundation money and federal grants, rarely mentioning Agenda 21, salaried environmental activists are convening unsuspecting local citizens to engage in the "visioning" process to plan for the sustainable community in their future. Vice President Gore's Clean Water Initiative and the administration's American Heritage Rivers Initiative are nurturing the process by encouraging local "watershed councils" to make comprehensive plans for their regions.

Herman Daly's Apocalyptic Vision

Probably not many of these souls have read the works of Herman Daly or Maurice Strong, the Rio documents, or the modern college textbooks in sustainable economics. If they had, they might be less eager to help. Daly, an economist, first came to national attention during the 1970s when the Joint Economic Committee of Congress published his plan for reducing births by government licensing. As in China, the government would issue the licenses in the restricted numbers requisite for achieving its population targets, and persons attempting to give birth without licenses would be punished. Unlike the Chinese system, the licenses could be bought or sold, as in the modern schemes for emissions control (Daly 1976).

People of common sense hearing such schemes tend to find them fantastic and amusing. But the World Bank was so enchanted by Daly's notions that it gave him a job as a senior economist in the Environment Department. In 1990 he and a theologian co-author, John B. Cobb, Jr., published their comprehensive plan for the salvation of the world, *For the Common Good: Redirecting the Economy towards Community, the Environment and a Sustainable Future*. Disputing major teachings of economics, the authors called for university "reform" to reduce the influence of economics and increase attention to the "social and global crisis" (357–60). That reform, of course, is now going forward. Like other leaders of mass movements, they argued that logical reasoning is greatly overdone and called for "a conscious shift toward . . . relativisation" (359). Such a shift also is rapidly occurring. Daly's hostility toward economics is not unique; many aspiring world-changers have seen economics, with its emphasis on logical reasoning based on fact, as the enemy of their plans.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Daly and Cobb called for the conversion of "half or more" of the land area of the United States to unsettled wilderness inhabited by wild animals (255), the abolition of private land ownership (256–59), a giant forced reduction in trade and a change to self-sufficiency at not only the national level but at local levels also (229–35, 269–72), government controls to reduce output to "sustainable biophysical limits" (whatever those might be) (143), and the resettlement of a large portion of the population to rural areas (264, 311)—remember Cambodia and Pol Pot, who has been called "the ultimate deep ecologist."

Moreover, they wanted a prohibition of the movement of private wealth (221, 233)—so much for any escape from the sustainable paradise—the abolition of direct elections, except for local officials who would in turn elect higher officers of the government (177), and, of course, complete population control by means of birth licenses. The intent was to promote the "biospheric vision" in the spirit of "deep ecology," which sees the need for a "substantial decrease in the human population" to promote "the flourishing of nonhuman life" (377). They added that this necessary reduction in the "human niche," a phrase echoed in subsequent United Nations documents, might be achieved either by a fall in population or by a decline in resource consumption (378).

Daly and Cobb understood that these vast changes would require some readjustments in attitudes, to say the least, and saw hope in the "influence of ecological and feminist sensitivities" (377). Not only have those attitude adjustments materialized, but academic economics, identified by Daly as the enemy, has also been remarkably helpful, producing quantities of new books and courses on sustainable development and related topics. Generous grants from government, foundations, and international agencies have encouraged this outpouring.

The justification for these massive changes in human life on the planet lay in what Daly and Cobb called "the wild facts"—that is, the alleged extinction of species, the ozone hole, the greenhouse effect, acid rain, and the imminent exhaustion of oil supplies. The last, of course, has disappeared from the current list of portending calamities; but never mind, we now have deforestation and the methane crisis. In any event, the bottom line was that we suffer from an excessively human-centered point of view, and people should be taught to adopt the "biospheric vision" (376) in recognition of our "community with other living things" in the spirit of "deep ecology."

Daly and Cobb provided no evidence of any of the catastrophes they listed and even acknowledged some uncertainty about the "precise physical effects" (416). Nevertheless, they insisted that the impending crises were "facts" that could not be denied. Scientific disputes over these matters have expanded since then, prompting the True Believers to develop new arguments.

Some of us may wonder whether the work we do makes any difference in the scheme of things. Daly and Cobb need have no such concerns. Their words, phrases,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and arguments now appear throughout the United Nations documents on the sustainable society and the literature of sustainable economics. And Daly, now at the University of Maryland, has reiterated his vision in a 1996 book, *Beyond Growth: The Economics of Sustainable Development.* Together with Robert Costanza, Daly now directs the International Society for Ecological Economics, based in Solomons, Maryland.

Steven Hackett's Contribution

The nature of current college instruction in the field can be seen in a new textbook, *Environmental and Natural Resources Economics: Theory, Policy, and the Sustainable Society* (1998), by Steven C. Hackett, who teaches economics at Humboldt State University. As in Daly's case, Hackett's justifications for proposing fundamental social change are the imperiled biosphere and "the continued growth of human population," which causes "loss of biodiversity" and "deteriorating . . . wilderness areas" (12, 13), and many other ills.

On these points, there is serious debate, as the author admits. He insists nevertheless on "the potential for catastrophic change in the global climate . . . rising sea levels . . . inundation of . . . low-lying areas . . . desertification of . . . grain-producing areas . . . mass hunger . . . and . . . rapid loss of biodiversity" (12). These dire forecasts, of course, have been featured on television for a generation and will probably not unduly alarm modern students. Nor will these hardened young consumers of doomsday prophecies be surprised to learn that population growth threatens the "habitats of many of the world's species of animals and plants . . . the integrity of the world's remaining temperate zone wilderness areas, coral reefs and other marine ecosystems, and tropical rainforests" (12, 13).

Descriptions of these expected calamities recur throughout the book, repeating what college students have heard from Peter Jennings, Ted Turner, Al Gore, and Zero Population Growth throughout their young lives (Singer 1999). Global warming portends "hundreds of millions or more people leaving Bangladesh, the Nile Delta, and coastal China . . . summer droughts . . . heat waves . . . reduce[d] soil fertility" (190–91). According to Hackett, the distinguished scientists (including a former president of the National Academy of Sciences) who dispute this scenario (Seitz 1998) have ulterior motives; he says many of them are in the pay of the coal and oil industries (192). Never mind the flood of grants going from the Department of Energy, the World Bank, and other sources to Hackett's side.

"Deforestation" is a dire threat, according to Hackett, although Food and Agriculture Organization data show that forests occupy 30 percent of the world's land area, a fraction that has not declined since 1950 (U.N. Food and Agriculture Organization 1950–1994). In the United States the forest cover of one-third of the land has not declined since 1920, but the annual growth has more than tripled, according to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the U.S. Forest Service (U.S. Forest Service 1992). The National Wilderness Preservation System grew from 9 million acres in 1964 to 104 million in 1994 (National Wilderness Preservation System 1994).

The "rate of extinctions" is a matter of great concern to Hackett, but here again many questions arise. For one thing, there are no data. As David Jablonski, who also believes in the decline, has noted, "we have no idea how many species there are or how many are endangered" (Stevens 1991). Species such as the blue whale (Baskin 1993) and the black-footed ferret (Lamberson 1994), once reported as nearing extinction, turn out to be more numerous than previously thought. The vast extent of unexplored wilderness throughout the world means that human beings are very far from being able to take a census or even make a decent guess about the numbers of other species. Also, if the earth really is warming, that change should be very good news for the species, because many of them thrive especially well in warm climates.

This is not to argue that nothing should be done about the obvious cases of excessive hunting and abuse of the non-human creatures. The reports—one hopes they are false—of the massive kills during the big-game hunts of the Duke of Edinburgh, who heads the World Wildlife Fund, are sickening.

Hackett describes the causes of the impending environmental collapse. First, there is social and economic injustice. Certainly no one can deny that the world has more than enough injustice. That it is a main cause of environmental problems, however, is not clear. When he reports that "the wealthiest 20 percent of the world's people receive 82.7 percent of the world's income," while "two-thirds of the world's people live on the equivalent of $2 or less per day" (13), he seriously distorts economic reality. An economist, of all people, should understand that income bears some relation to productivity. The people of Bangladesh are not desperately poor because the people in the United States enjoy a high standard of living in their relatively free and peaceful society. Bangladesh suffers from a huge, corrupt, foreign-aid-dependent bureaucracy that milks and strangles its people's productivity.

At another point in the book, Hackett points out the major problems in measuring gross product and thus in comparing it for different countries, but these difficulties do not deter him from making this comparison between the rich and the poor.

Also maddeningly unworthy of an economist is Hackett's statement that "the South African government must also provide for the basic needs of the very poor, mostly black, people . . . including medical care, water, . . . housing, and schools" (301). Does Hackett not realize that the people always and everywhere provide for themselves as well as for their government? The people raise food; they build houses, hospitals, and schools; they nurse the sick and teach and pay taxes. What the government should do, but often doesn't, is to allow the people to work and produce in peace and safety. Hackett's patronizing attitude, so common among various world-changers, toward people, this view of them as the helpless wards of government, is profoundly disturbing in a textbook on economics.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Is the Earth Overpopulated?

Overpopulation, according to Hackett, is a major cause of our doleful condition. Having softened the obviously elitist implications of the diagnosis by professing his concern for injustice, he can get on with the real message. The prolific people of the less developed countries are wreaking havoc on their "fragile environments," engaging in "deforestation . . . migration to . . . polluted urban areas . . . massive environmental degradation" (13), and so forth. Unmentioned are the government policies that create these disasters, such as the destructive taxation of farmers' productivity, the government monopolies that underpay and overcharge the people, the confiscation of traders' stocks and pack animals, the endless wars financed by foreign aid.

Hackett doesn't mention the large current declines in fertility and population growth rates throughout the world. United Nations figures show that seventy-nine countries with 40 percent of the world's population now have fertility rates too low to prevent ultimate population decline in those countries (U.N. Population Division 1996). But this evidence gives little comfort to Hackett, who quotes estimates showing that "2 to 5 hectares of productive land are needed to support . . . the average person . . . in an industrialized country [whereas] . . . the world has only 1.5 hectares per capita of ecologically productive land . . . and . . . only 0.3 hectare per capita are suitable for agricultural production" (263). In other words, not only does the less developed world have far too many rapidly multiplying people, but *population in the industrialized countries is several times too large.*

As he does throughout the book, Hackett hedges by saying that we don't really know our "carrying capacity," but the undergraduate reader is going to learn that, whatever that capacity may be, there are already far, far too many people on the earth. In a like vein, Paul Ehrlich, famous for his unblemished record of wrong forecasts, has said the world has "perhaps" five times as many people as it can tolerate (Ehrlich 1989).

Let us not imagine, therefore, that the advocates of the sustainable society are merely talking about cleaning up pollution and giving birth control pills to people in Africa, Asia, and Latin America. Although present State Department and U.N. efforts to restrain the increase of dark-skinned people are very strenuous indeed, they are seen as not nearly enough. Hackett quotes Devall on the desirability of "a substantial decrease of the human population" (20). And he describes the "coercive fertility-control" in China (234) and the proposals of Daly and Cobb and Kenneth Boulding for birth quotas. Spokesmen for the Clinton administration, such as Timothy Wirth, have specified that world population control must include the United States (Wirth 1996). Notice, too, that all of the sustainable society documents call for "population stabilization," without saying whether that is to occur at a population size larger or smaller than the present population.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

We hope no guilt-ridden students rush to jump out of our overladen lifeboat before, first, asking why Hackett, Daly, Cobb, and Ehrlich have not done so already and, second, hearing some other information. Again according to Ehrlich and other, more reliable, sources, human beings actually occupy between 1 and 3 percent of the world's land area (Vitousek et al. 1986). The entire world population could be put into the state of Texas, leaving the rest of the world devoid of people. The population density of that giant city of Texas would be about 20,000 persons per square mile, which is somewhat higher than in San Francisco but lower than in Brooklyn (5.9 billion world population divided by 262,000 square miles of land in Texas implies 22,500 persons per square mile, or 1,200 square feet per person).

Farmers use less than half of the world's arable land (Revelle 1984). The world food supply has increased a great deal faster than population since 1950, according to the Food and Agriculture Organization (U.N. Food and Agriculture Organization 1996). This increase, however, has left millions in Bangladesh and elsewhere still hungry, for the reasons already mentioned. Recent studies at the Council for Agricultural Science and Technology show that farmers could feed a future population of 10 billion by using less cropland and producing less silt and pesticide runoff than at present, thus leaving more land for nature (Waggoner 1994). And the prospects for the world population's ever reaching 10 billion grow dimmer by the hour (U.N. Population Division 1998).

Although many population scholars note that fertility declines when output and income grow, Hackett presents Ehrlich's claim that "Mexico and Brazil . . . have undergone periods of income growth with little or no reduction in birthrates" (232). In fact, the crude birthrate (births per 1,000 population) in Mexico fell by more than 40 percent between 1950 and 1995, according to U.N. data, and in Brazil it fell by more than 50 percent (U.N. Population Division 1996). In 1950–55 the typical Mexican woman was having almost seven children during her lifetime; in 1990–95 the number was three. In Brazil in 1950–55, the typical woman was having six children during her lifetime; by 1990–95, the number was 2.44 (U.N. Population Division 1996). The reason these changes are probably permanent is that the world is rapidly urbanizing, and rearing children is much more difficult and entails a higher opportunity cost in urban settings, where women can and often do work outside their homes.

Hackett misses another important fact in his chart of the "demographic transition" (233). Not only does the birthrate fall as development proceeds, but the death rate rises, after an initial decline. The reason is that eventually the population grows older on the average as fewer babies are born, and death rates are higher for elderly groups. Thus, the crude death rate in elderly Sweden is 11.4 per 1,000 population, whereas in youthful Mexico it is only 5.2 (U.N. Population Division 1996). These two events—the decline in the birthrate and the rise in the death rate—work together to reduce population growth.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Market Failure?

Hackett has little hope that existing institutions can steer the earth away from the looming catastrophes. As for markets, they "*reinforce* self-interested behavior" (29). One searches Hackett's book in vain for any sign of understanding Adam Smith's "invisible hand" that leads men to serve one another and to economize in their use of resources as they pursue their own self-interest. There is no sign that Hackett has ever read the great economist John Maurice Clark, who called the market "our main safeguard against exploitation" because it performs "the simple miracle whereby each one increases his gains by increasing his services rather than by reducing them" (1948). He seems unaware of Walter Eucken's perception that markets break up the great concentrations of economic power (1950) or F. A. Hayek's (1948) and Ludwig von Mises's (1949) realization that markets provide otherwise unavailable information about the scarcity of the resources that are the focus of his concerns.

This is not to argue that markets will solve all economic problems. Well-known and much-discussed problems of externalities, public goods, and common pool resources, sometimes arise, as Hackett notes. But the nonmarket economies of this century have provided vivid object lessons in the pitfalls of "communitarian" planning, and the work of James Buchanan, Gordon Tullock, and others has pointed up the perverse incentives that infest the public sector as it goes about trying to correct "market failure."

At times Hackett acknowledges that public ownership and management do not always produce ideal results, but for the most part he sees the market as the villain and concludes that our best hope lies in "cooperative rather than noncooperative decision making" (91). It is a conclusion he draws from game theory, and it leads to his hopes for "sustainable development" through small-group negotiations. On this issue, more later.

A glaring defect of the market, according to Hackett, is that "issues of fairness, ethics, and spirituality may not be commensurable with monetized costs or benefits. Can we compare the value of a unique sacred place to the revenues and jobs created by logging, mining, or razing the site?" (97). The young activists trashing a congressman's office in Hackett's own area, Humboldt County (*Times Standard* 1997, 1998), which is three-fourths covered with trees (Lammers 1998), have decided that a stand of privately owned trees is uniquely sacred and that logging amounts to "razing." They have made that judgment even though tens of thousands of acres of old-growth redwoods exist in parks and reserves where they will never be cut (Lammers 1998) and this particular stand will certainly be replanted—the company plants thousands of trees a year, and a redwood will grow six feet a year out of its own stump (as I've seen in my own ten acres of redwoods). Do the rhetoric and violence of these inflamed youngsters constitute a preferable basis for decision making in this case?

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Not surprisingly, Hackett finds private property highly suspect: "It is clear that systems centered around private property . . . can conflict with the common good" (26). After a brief discussion of John Locke and proposals for protecting natural resources by assigning private property rights to them, Hackett points students to a patron saint of the French Revolution: "From Rousseau's perspective . . . private property rights . . . alienate people from nature . . . [and] lead to inequality . . . and wars." He quotes the great man: "Competition and rivalry . . . opposition of interests . . . and always the hidden desire to profit at the expense of others. All these evils were the first effect of property" (25–26).

Such an indictment demands a response. Private owners did not hunt the buffalo almost to extinction. And it was not a private property system that sent millions to the gulag. When the Ethiopian government socialized the privately owned donkeys, most of them perished (Deressa 1985). I keep the off-road vehicles out of my private forest. And the biblical good shepherd was not the government or the assembly of "stakeholders" in the "sustainable community"; he was the *owner* of the sheep. Where does the common good lie in these decisions? And, most important, Who decides what the common good is? In fairness, also, Hackett might have mentioned the bloodbath that Rousseau's ideas encouraged. Like Devall, Daly, and other environmental utopians of our own time, Rousseau distrusted reason and argued for going "back to Nature." Ever the romantic, he sent his five children to a foundling home (Gauss 1972).

Economists have long noted that voluntary trade must make its participants better off or they wouldn't engage in it, whether they are children trading the contents of their trick-or-treat bags or Mexicans buying used bottles from California to turn them into gravel. Adam Smith and David Ricardo, and even Sir Dudley North before them, saw it as the solution to the uneven distribution of resources. Hackett, however, like Daly and Cobb, whom he quotes at length, lists many objections to trade. It "may . . . allow rich countries to import pollution-intensive, resource-intensive, and endangered-species products they do not wish to produce themselves and to export their toxics and trash" (225). It "tends to erode livable wages, the bargaining power of unions, and environmental and other standards of communities" (226). It "undermines sustainability" (227) and "has put great pressure on . . . endangered wildlife" (229).

Nevertheless, Hackett concludes that although there are "important questions" about how much and what kind of trade to allow, "it is neither practical nor desirable to eliminate trade completely" (230). What a relief. Clearly, however, what is left will be a far cry from free trade, just as all other human activity will be far from free in the "sustainable society."

Throughout the world, controllers and would-be controllers have seen, to use Smith's phrase, the human "propensity to truck, barter, and exchange" as a resource to be exploited or suppressed for the benefit of those in power. From mercantilist England, France, and Spain to the recent Soviet Union and modern Ethiopia, governments have sought to channel this propensity, always with the result of impoverishing

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

their subjects. To illuminate the ill effects of trade controls was the main task of Smith's *Wealth of Nations*. That modern proponents of the "sustainable society" should be so eager to revive such controls should give us pause—doubly so because these people *intend* to reduce human consumption, and they understand very well that trade restrictions do impoverish people.

Like Daly, Hackett takes a dark view of what he calls "mainstream economics." Students who have studied economics, according to Hackett, are less altruistic than other students (28). Economics itself, he maintains, tends to reduce everything to a monetary cost-benefit comparison without recognizing "intrinsic" values. In his view, however, not all intrinsic values are equally worthy of recognition. Individual rights are especially suspect. By contrast, the "sustainability ethic holds the interdependent health and well-being of human communities and earth's ecology over time as the basis of value" (209), and is therefore clearly superior to the viewpoint of mainstream economics.

Economics and Ethics

Private property, the market, and economics itself, it would seem, are the bad fruit of a bad tree, the disordered ethical system of contemporary society. Hackett blames the shortcomings of economics on its "teleological ethics"—that is, the end justifies the means—attributing the idea to "religious philosophers" (21). This reference enables him to take a swipe at both religion and economics. Evidently, Hackett either never had catechism or was inattentive when Sister told him the end does not justify the means. His example is "utilitarianism," which he describes as the "normative base" for "much of the traditional economic perspective" (21). His straw man is Jeremy Bentham, a nineteenth-century eccentric who had his body stuffed and put in a glass case after he died so it could be on view for University College, London, undergraduates for all time (Mack 1972).

Bentham's mechanical pleasure-pain calculus has amused students for generations, but other men—Smith, Jean Baptiste Say, Ricardo, Carl Menger, Alfred Marshall, and others—did the serious work of showing how the market reveals and reconciles the varied and conflicting desires of multitudes of individuals, channeling their self-interest to the service of others in their pursuit of individual gain.

These monumental themes receive barely a glance from Hackett, who remains intent on showing the failures of market calculations and the need for more sublime direction by persons imbued with the spirit of the sustainable community and tutored in sustainable economics. To illustrate, Hackett poses the "question of whether an action (for example, policy protecting old-growth forest) is to be judged on its intrinsic rightness or based on the measurable benefits and costs that might result" and "the proper balance between individual self-interest and the common good," again undefined (17–18).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

There ensues a discussion of the "fundamentals of ethical systems," beginning with "deontological ethics," which judges an action by "its intrinsic rightness" (19). As an example, Hackett quotes at length from the "ecosophy," or "earth wisdom," of Bill Devall, George Sessions, and Arne Naess:

> The well-being and flourishing of human and non-human life on Earth have value in themselves. . . .
>
> The flourishing of human life and cultures is compatible with a substantial decrease of the human population. The flourishing of non-human life requires such a decrease.
>
> Those who subscribe to the foregoing points have an obligation . . . to . . . implement the necessary changes. (20, quoting Devall 1988)

Clearly, this call is not for minor adjustments in lifestyle. A "substantial decrease of the human population" is no small thing. Our "obligation . . . to . . . implement the necessary changes" is a profoundly serious matter. This proposal is not a nickel-and-dime deal. True, Hackett is only quoting Devall at this point, but his discussion makes it clear that Devall's insistence on "intrinsic rightness" is a far more beautiful thing than the crass monetary valuations of "utilitarian" economics.

To make the issue perfectly clear, Hackett offers an example. Suppose an endangered species is threatened by development. Guess what will happen in a "society that views the existence of a species as being of intrinsic value" (à la Bill Devall). Then guess what will happen if a monetary cost-benefit comparison determines the outcome. Obviously, all economists, except an enlightened few, should be taken out and shot.

Nowhere in Hackett's discussion of ethics does he refer to the Judeo-Christian tradition of stewardship—the admonition to "keep" the earth (Gen. 2:15), the prescribed days of rest for men and beasts (Deut. 5:14), the prescribed years of rest for the land (Lev. 25:4), the love of nature with its "Leviathan" taking its sport in the sea and its "coneys" among the rocks (Ps. 104), its cedars of Lebanon (Ps. 92), its hills that "rejoice on every side" and its valleys that "laugh and sing" (Ps. 65), and the strict injunctions against the worship of nature and the human sacrifice that often accompanied it (Deut. 17:3, 20:2–6; 2 Kings 17; Job 31:26).

Modern economic reasoning does not destroy these values any more than modern atmospheric science destroys the beauty of a sunset. Certainly, the sin of greed has always beset the race, as has idolatry. Just as certainly, modern economics has its idolaters as well as its Midases, but such corruption is nothing new on earth. Economic reasoning enables us to compare alternatives. It enables us to see that a society following the romanticism of Devall or Daly would probably be no more attractive or healthful than the one we have. One of the greatest tragedies of our time is not that undergraduates study economics but that they study so little of the great civilizing

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

themes of our heritage—our great literature, art, and music, our legacies from the ancient Greeks, our tradition of human rights and our history of the struggle for liberty—and that they know so little about Christianity or Judaism. Thus deprived, they are left vulnerable, not so much to "utilitarianism" as to environmental lunacy.

Worse yet, as John Grobey, professor of economics and a senior colleague of Hackett at Humboldt State University, has noted, the result must be to deprive young people of the traditional birthright of youth—hope for the future. Taught from their earliest years that their own burgeoning humanity is destroying the earth and all of nature, the youth of today face a more depressing prospect than perhaps any previous generation. No wonder the doubling of the suicide rate among children aged ten to fourteen since 1980 (U.S. Bureau of the Census 1997). No wonder the epidemic of school shootings. No wonder the recent case in Humboldt County in which a young man on trial for attempted murder gave as his defense "overpopulation, dwindling resources and the certain doom of the planet" (Parker 1998).

The changes in "basic economic, technological, and ideological structures" called for by Devall obviously threaten traditional views of individual rights to life, liberty, and property. The question that occurs to a mainstream economist at this point is, Just which individuals will be given the awesome responsibility of determining the "common good" and the best interests of the community and the ecology? And what will happen to human beings, stripped of individual rights, who get in the way of the grand march to the sustainable community? Hackett gives hints but no answers. He acknowledges the seminal work of Daly, but without mentioning Daly's call for massive resettlement of populations. The question remains: Is the centuries-long pilgrimage from Magna Carta through *Areopagitica* and the Bill of Rights to Selma to be renounced now in the name of the environment? Will this denouement be the Clinton legacy?

No Price Is Too Great

Having demolished economics, private property, the market, and individual rights, Hackett poses the question, "So what is the nature of our economy, and what should we do to change it?" (27) Traditionally, textbook writers have not set out to change society or to incite their students to change it, but Hackett's is not a traditional book. His answer is, "The discipline of ecological economics has recently organized itself around the integration of ecology (nature's household) with economics (humankind's household), an integration that is central to the concept of a sustainable society" (209).

Accordingly, Hackett offers a long list of ways to use "ecological economics" to bring about the sustainable society, including solar cookers, wind machines, hydrogen-powered vehicles, "eco-labeling," encouragement of local small businesses, and eco-tourism (presumably reserved for a select few in the new regime of heavy taxes on gasoline and restrictions on access to conservation areas). Undergirding everything

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

would be new taxes, government regulations, and subsidies. In a word, applying "ecological economics" entails a comprehensive government network of social and economic controls to reduce us—those of us who remain after the population has been forcefully "stabilized"—to a preindustrial standard of living (270–84). (No doubt our leaders, who jet from one international conference to another to plan our future, would be exempt from the constraints applied to the rest of us.)

Hackett is honest enough to acknowledge that government requirements for alternative energy in California have given rise to energy prices 50 percent above the national average (279). And he is economist enough to admit that, if we are indeed "running down the natural environment" (256), steeply rising resource prices will force the shift to less depleting and polluting technologies. The problem is, as other devotees of planning have claimed, the market may be "too late" to prevent "irreversible" destruction (277). The evidence, however, does not suggest that government is quicker than the market to recognize problems (Stroup and Meiners 1999). Witness the numerous examples of government projects that have become ecological disasters, including Aswan and Chernobyl and the Great Leap Forward.

"Most important to the success of more sustainable production and consumption," Hackett concludes, "is for people to become convinced that existing systems are destructive" (272). His book certainly does its bit along those lines. To shore up his case for wrenching changes, Hackett advises that conventional cost-benefit analysis is inadequate, that "there is no good ethical argument for using a pure rate of time preference other than zero" (241). He omits the standard procedure of risk analysis, which takes into account the probability (or improbability) of uncertain events. In plain English, we are to treat nightmarish visions of the far-distant future as if they were present reality. Stop arguing. It's an emergency. Do as we say, now.

Sealing his case, he argues, "Preservation has option value—it gives us time to learn about the possible services that are provided to people by the rain forest" (110). Never mind that trees grow and that reforestation is also occurring. Preserve it, except, of course, when it's going into masses of U.N. publications on the sustainable society.

Hackett makes it sound as if the sustainable society will be brought about by local meetings of "stakeholders" negotiating over local issues. But undergirding these cozy negotiations will be "regulations, taxes, subsidies, and direct funding of clean technology" (277). Of course, the Sierra Club will be there to help.

Here is the rub. To avert a highly problematic future disaster, much disputed by competent scientists, Hackett and his soul-mates in the United Nations and the Clinton Council on Sustainable Development would require human beings to submit to a gigantic present sacrifice of freedom, human dignity, and material welfare in a regime controlled by unelected officials of a global eco-bureaucracy. Have we learned nothing from the utopian horrors devised for us during the past century?

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

People do love nature. The tremendous expansion of national parks and conservation areas during this century testifies to that love. The environmental movement itself is an expression of our determination not to let the industrial age destroy the oceanic Leviathan and the cedars of Lebanon. The real danger now, however, is not that we stand on the verge of destroying nature but that, stampeded by environmental terrors on every hand, we are plunging over the cliff into totalitarianism.

References

Agenda 21 and Other UNCED Agreements. 1992. Retrieved August 30, 1997, from the World Wide Web at http://www.igc.apc.org/habitat/agenda21.

Baskin, Yvonne. 1993. Blue Whale Population May Be Increasing off California. *Science* 260 (April 16): 287.

Clark, John Maurice. 1948. *Alternative to Serfdom.* New York: Knopf.

Daly, Herman E. 1976. Transferable Birth Licenses. In *U.S. Economic Growth from 1976 to 1986: Prospects, Problems, and Patterns,* Vol. 5, *The Steady State Economy,* by the Joint Economic Committee, U.S. Congress, Washington, D.C., 1976, 26–28.

———. 1996. *Beyond Growth: The Economics of Sustainable Development.* Boston: Beacon Press.

Daly, Herman E., and John B. Cobb, Jr. 1990. *For the Common Good: Redirecting the Economy towards Community, the Environment and a Sustainable Future.* London: Green Print (Merlin Press).

Deressa, Yonas. 1985. The Politics of Famine. *Biblical Economics Today* 8 (April–May).

Devall, Bill. 1988. *Simple in Means, Rich in Ends.* Salt Lake City, Utah: Peregrine Smith.

Earth Council. 1997. *Report Highlights.* Retrieved January 7, 1999, from the World Wide Web at etwork.org/global/reports/reg_meet_sum/report.htm.

Ehrlich, Paul R. 1989. Our Earth Is Past the Point of No Return. *Newsday,* February 6.

Eucken, Walter. 1950. *The Foundations of Economics.* Edinburgh: Hodge.

Gauss, Christian. 1972. Rousseau. *Encyclopedia Americana.* Vol. 23, pp. 723–25.

Hackett, S. C. 1998. *Environmental and Natural Resources Economics: Theory, Policy, and the Sustainable Society.* Armonk, N.Y.: M. E. Sharpe.

Hayek, Friedrich A. 1948. *Individualism and Economic Order.* Chicago: University of Chicago Press, 1948.

Hong, W. 1998. Tianjin Hold National Family Planning Meet. *Tianjin Tianjin Ribao,* daily newspaper of the Tianjin Municipal CPC Committee, January 6.

Lamb, H. 1998. The Cost of Sustainable Development. *eco-logic,* March–April, pp. 16–21.

Lamberson, Roland. 1994. Scholar of the Year Lecture (on mathematical modeling). Humboldt State University, May.

Lammers, Phyllis A. 1998. *Humboldt County's Forest Resource Dollars.* Eureka, Calif., May.

Mack, Mary Peter. 1972. Bentham. *Encyclopedia Americana* Vol. 3, pp. 559–60.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

National Wilderness Preservation System. 1994. *Fact Sheet.* Retrieved March 13, 1998, from the World Wide Web at nps.gov/partner/nwpsacre.html.

Parker, Rhonda. 1998. Jury Reflects on Plaza Stabbing Case. *Eureka (Calif.) Times Standard,* May 23, p. A1.

President's Council on Sustainable Development. 1995. *Draft Report,* reprinted excerpts. *eco-logic,* November–December.

Revelle, Roger. 1984. The World Supply of Agricultural Land. In *The Resourceful Earth: A Response to Global 2000,* edited by Julian L. Simon and Herman Kahn. Oxford: Blackwell.

Seitz, Frederick. 1998. Letter. *Petition Project.* Retrieved August 20, 1998, from the World Wide Web at http://206.67.56.58/pproject/s33p41.htm.

Sierra Club. 1994. *Population and Consumption: The Sierra Club Has a Vision for Both.* Report distributed at the International Conference on Population and Development, Cairo, September.

Singer, S. Fred. 1999. *Hot Talk, Cold Science: Global Warming's Unfinished Debate* (revised second edition). Oakland, California: The Independent Institute.

Stevens, William K. 1991. Species Loss; Crisis or False Alarm? *New York Times* (Science Times), August 20, p. B-5.

Stroup., Richard L. and Roger E. Meiners. 1999. *Cutting Green Tape: Toxic Pollutants, Environmental Regulation and the Law.* New Brunswick, N.J.: Transaction Publishers and the Independent Institute.

Times Standard. 1997–98. Eureka, Calif. Various issues.

U.N. Food and Agriculture Organization. 1950–94. *Production Yearbook.* Rome.

———. 1996. Food Requirements and Population Growth. *World Food Summit Technical Background Documents* 1-05. Rome. Vol. 1, p. 6.

U.N. Population Division. 1996. *World Population Prospects: The 1996 Revision.* New York.

———. 1998. *Revision of the World Population Estimates and Projections.* New York.

U.S. Bureau of the Census. 1997. *Statistical Abstract of the United States.* Washington, D.C.: U.S. Government Printing Office, table 139.

U.S. Forest Service. 1992. *Forest Resources of the United States.* Washington, D.C.: U.S. Department of Agriculture.

Vitousek, Peter M., Paul R. Ehrlich, Anne H. Ehrlich, and Pamela A. Matson. 1986. Human Appropriation of the Products of Photosynthesis. *BioScience* 36 (6): 369.

Von Mises, Ludwig. 1949. *Human Action: A Treatise on Economics.* New Haven: Yale University Press.

Waggoner, Paul E. 1994. *How Much Land Can Ten Billion People Spare for Nature?* Ames, Iowa: Council for Agricultural Science and Technology, February.

Wirth, Timothy E. 1996. Text of speech to "Soap Summit II." New York, September 7.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

REVIEW ESSAY

On Treating Like Cases Alike

ANTHONY DE JASAY

Idealism, intelligence, and importance are a rare combination. *Politics by Principle, Not Interest,* the book on "non-discriminatory democracy" by James Buchanan and Roger Congleton, achieves the feat of combining them, though the occasional strain shows that the three are not natural bedfellows. The book is enormously ambitious: it sets out to prove that by enshrining the principle of treating like cases alike ("the generality principle") in the constitution, the body politic could be purged of much sordidness and conflict. There would be no winning and losing coalitions, for coalitions could no longer take wealth from one another. Yet with "politics as taking" barred, the deadweight costs of redistribution and rent seeking would be saved, and all sides would be not only more fairly treated but also better off materially. Imposing the generality principle on politics would be a Pareto-improving move. *Politics by Principle* pleads for the move to be made.

The book is remarkable in at least two respects. The first is its courage in exposing the sacred cow of what it calls "majoritarian" democracy (is any "real-existing" democracy not majoritarian?) in all its immorality and inefficiency. Admirable, too, is the painstaking application of the analytical schema to such fields as externalities, public services, fiscal policy, interpersonal and intergenerational redistribution, and social insurance, implying that if the generality principle works, it does so right across all fields usually regarded as the proper domain of collective choices.

Three theses are put forward. The first, best called Contract, argues the possible legitimacy of coercion by collective choice and establishes a link to the contractarian tradition that now constitutes the mainstream of political thought. The second, Cycle,

Anthony de Jasay is an independent scholar and author living in Paluel, France.

The Independent Review, v.IV, n.1, Summer 1999, ISSN 1086-1653, Copyright © 1999, pp. 107–118

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

argues that because collective choices dealing with distributions of benefits and burdens are unstable and every distribution is dominated by another, winners cannot win permanently and would in fact be better off under a constitution that, by imposing generality, abolished the rotation in which winners become losers and vice versa. The third and main thesis is Generality, a formal rather than a substantive principle that, if applied, puts distributional conflict out of bounds by equal treatment, the treating alike of like cases.

Here is a massive job for the Devil's Advocate. The present essay traces the line of attack he could be expected to follow. The author of the essay wishes to add, for the record, that he would not be displeased if, on some judgment day, the plea of the Devil's Advocate were found to have failed and that of Buchanan and Congleton to have prevailed.

Contract

Pivotal to the argument is the lesson to be drawn from David Hume's parable about draining a swampy meadow by what is called "collective action" in modern jargon. In his *Treatise of Human Nature,* Hume tells us that some neighbors agree to dig a drainage ditch, to the benefit of their adjacent farms. "Agreement" here means more than the shared opinion that it would be nice to have a drainage ditch. It is a reciprocal promise by the neighbors to dig it. It is, in effect, a contract. Hume goes on to say that such promises are the means by which men achieve shared ends, from the digging of ditches and the building of bridges, harbors, ramparts, canals, and armies to the formation of governments. He is quite explicit in giving contract causal priority over the state, which most other theorists say is needed before a contract becomes a binding commitment. The contract here binds the parties because it is self-enforcing. In modern parlance, we would say that the parties see this interaction as a single link (a "node") in a chain of interactions stretching indefinitely into the future, with a probabilistic and ever-receding endpoint. The parties ("players") choose to perform according to their contract, as well as future ones to be entered into, because in comparing the relative merits ("payoffs") of performing as promised or defaulting, they consider the present value of two streams of expected payoffs along the whole chain. Performing prolongs the chain; defaulting (taking the "free rider" strategy) damages the chain or breaks it off altogether, so that the defaulter gets few or no chances to default again. Hume, in fact, implicitly employs the Folk Theorem of modern game theory, which shows the cooperative strategy in repeated prisoners' dilemmas under certain conditions to be a Nash equilibrium.

Buchanan and Congleton, taking the drainage ditch as an isolated collective enterprise, present the usual, and perfectly correct, solution that for each farmer, not digging is always a better strategy than digging, whatever the other farmers do; hence there will be no ditch, nor any other collective action. The farmers cannot credibly

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

bind themselves by contract, and for their own good they need to be coerced by a contract enforcer, the state.

By this reasoning, contractarian philosophy explains the individual's willing subjection to a collective choice mechanism, backed by a monopolistic coercive agency, as a "social contract" that could be agreed to by all rational persons. The necessity for coercion breeds consent that, in turn, lends legitimacy to the state.

Buchanan and Congleton's restatement of the doctrine is more explicit and precise than most. It presents a clearer target for the Devil's Advocate than do more fudged and elusive versions. It has, or so he would argue, three easily identified chinks in its logical armor.

The first has long been recognized by critics of all forms of contractarianism, but to the best knowledge of the Devil's Advocate, no effective defense of it has ever been offered. If man can no more bind himself by contract than he can jump over his own shadow, how can he jump over his own shadow and bind himself in a social contract? He cannot be both incapable of collective action *and* capable of it when creating the coercive agency needed to enforce his commitment. One can, without resorting to a bootstrap theory, accept the idea of an exogenous coercive agent, a conqueror whose regime is better than anything the conquered people could organize for themselves. Consenting to such an accomplished fact, however, can hardly be represented as entering into a contract, complete with a contract's ethical implications of an act of free will.

Because prior to the construction of the collective choice mechanism the purported agreement must be unanimous (for, remember, there is as yet no rule for reaching non-unanimous decisions), no party to the social contract must be asked to accept a worse position, taking good periods with bad, than he would occupy without the contract. Here is the second chink in the doctrine's armor. Buchanan and Congleton stress that contractarianism "rules out payoffs that are sensed to be negative by any participant . . . over the whole set of anticipated political choices, the base point being defined by positions achieved when the majority rule, collective action game is not played at all" (p. 18). However, life without any collective action is difficult to imagine except on desert islands. If it is conceivable at all, it entails unmitigated misery. Because the authors believe categorically that collective action presupposes a coercive authority, and because almost anything is a better payoff than that available at the "base point," it follows that almost any terms, no matter how harsh or lopsided, must be accepted by the rational player. In terms of the economist's familiar device, the situation is like a very, very long Edgeworth box with a very, very long contract curve running inside it, with all points on it from one end to the other being bargaining solutions, better for both (or all) players than no contract. The actual solution may be outrageously good for one player and outrageously bad for the other; we do not know how the bargain will turn out, except of course that it will be Pareto optimal. But if the alternatives are rigged in such a way that the terms of mutually acceptable bargains can

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

vary from one gross extreme to the other, from princely privilege to abject submission, the condition of universally positive payoffs and unanimity is trivial.

The third weak spot reveals itself in the attempt to remedy the second. Contractarianism uses a veil of some kind to obtain certain behavioral results. In the original Buchanan and Tullock version, the social contract was concluded behind a veil of uncertainty; the lack of visibility concerned the future. People did not seek social-contract terms favoring one situation over another, because finding themselves in one kind of situation seemed no more probable than finding themselves in another. John Rawls, of course, operated with a very different device, the veil of ignorance, behind which people were unaware of their personal endowments and indeed of any differences that distinguished them from one another. Behind the veil of ignorance, contracting parties became, in the strictest sense, each other's clones. Somewhat drastically, Buchanan and Congleton resort to a double veil they call "the veil of uncertainty and/or ignorance," presumably obliterating knowledge of the future, or one's self-knowledge, or both, to suit all occasions. They argue, plausibly enough, that the veil or veils will powerfully narrow the bargaining problem, because parties unaware of their own interests cannot have conflicts over terms and should find it easy to agree on what seems fair and impartial to both.

It is no doubt as easy to reach unanimous agreement on innocuous terms (and perhaps on any terms whatever) under these conditions as it is to agree with oneself. The result is still trivial, no less so than the one reached without the help of veils. But it is a little disappointing to find perhaps the foremost champion of methodological individualism of our time producing this result by resorting to a device that effectively obliterates individuals and opens the back door for some holistic entity to take the place they can no longer usefully occupy.

Cycle

Politics by Principle recalls the well-known, and somewhat overworked, proposition of formal social-choice theory that if "society's choice" is taken as the largest number of individual preferences attracted by one alternative state of affairs, certain preference configurations will produce an incoherent result under which, given pairwise choices by at least three persons (or groups) among at least three alternatives, any "socially chosen" alternative will be dominated by another. Consequently, the actual choice must go round and round the available alternatives in a cycle. It is widely accepted that such cyclicality, in which any distribution of income or wealth is overturned by another that is "socially preferred" to it, should obtain in a society where majority coalitions are freely formed and able to expropriate the minority. For Buchanan and Congleton, the rotating nature of distributions, with today's gainers becoming tomorrow's losers, is the saving grace of majoritarian democracy, ensuring that no group in society will be a permanent loser from redistribution.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Devil's Advocate will contend that this conclusion would undergo radical revision if due distinction were drawn between a pure and a non-pure distribution "game" and also between distributional and electoral rotation. He will consider these distinctions in turn.

Consider a pure three-person Neumann and Morgenstern distribution game, where a coalition of two players can decide how a fixed stock of goods, say, one hundred golden eggs, shall be divided between them and a third player. With players A, B, and C entitled to form one two-person coalition and take one distributive decision per period, and with an exogenously given bargaining solution to tell us how the members of the coalition will share the golden eggs between them and how many they will leave for the third player, the following table shows how the solution will rotate over a full cycle of three periods. In each period, the payoffs in italics indicate which two players will form a coalition in the next period.

		Player		
		A	**B**	**C**
Period	**1**	50	*40*	*10*
	2	*10*	50	*40*
	3	*40*	*10*	50

Whatever the bargaining solution (provided it does not vary from period to period), over any full cycle the three players come out even, with an average share of thirty-three golden eggs. The present values of the three streams of payoffs differ a little because of the timing of high and low payoffs, but this difference is a minor matter if the discount rate is not exorbitant. Any coalition can lift its average payoff over the three periods by sticking together. For example, once A and B have secured their ninety golden eggs in the first period, if B sticks with A, both will keep having the permanently higher payoff of ninety between them, whereas C will be permanently exploited.

Myopia and bargaining difficulties may, for all we know, weaken the dominance of the stable over the cyclical solution. Consider, however, the incomparably stronger likelihood of the stable, noncyclical pattern of exploitation as we move from a pure to a non-pure three-person distribution game. There is now both production and consumption in each period. When, in period 1, player A has the most golden eggs, the redistributive payoff available to the coalition of B and C dominates that which any coalition that includes A can gain; hence the coalition BC will form to exploit A in period 2. B and C consume what they take from A. Player A, however, is a goose laying golden eggs. She produces, within the period, the same number of eggs that B and C take from her. Under this condition, at the end of period 2 the distribution is the same as at the end of period 1, and forming the coalition BC is still more profitable than forming any coalition that would include A—and this remains true at the end of every subsequent period. The "socially preferred" solution is perfectly stable.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Empirical evidence clearly demonstrates that in modern democracies redistribution is, broadly speaking, always from the richer half of the electorate toward the middle (which harbors within it the median voter) and the poorer half, with no rotation, which is what we should expect from looking at the distribution game with production and consumption, as well as on grounds of common sense. The richer half is not made poor and the poorer half is not made rich, by turns, as the Cycle thesis would predict.

However, Buchanan and Congleton invoke a different set of historical evidence to the effect that democracies tend to display an irregular but inevitable electoral rotation; sooner or later the team of political entrepreneurs in power is voted out and another team is voted in. Here, the authors seem to equate an electoral with a distributional outcome, instead of distinguishing between the two. One team of politicians will normally demarcate itself from the other by adopting different slogans, professing different values, and proposing different policies whose impact on the pattern of redistribution is small or opaque, hence difficult to perceive. It is, however, almost inconceivable that the first team should offer redistribution from rich to poor and the second team from poor to rich, which is what would be needed if electoral rotation were to amount to distributional cycling. The second team's offer would be strongly dominated by that of the first in terms of transfers and "targeted" public goods and services. We can assume that the larger sums in the first team's offer would swamp any effect that might be exerted by the intangible elements of the two teams' offers. To have a chance of winning the bid for the votes of one-half of the electorate *plus* a margin to make sure of the median voter, both teams have to formulate rich-to-poor redistributive offers. One would expect to capture the poorer half's allegiance, the other that of the richer half, with the latter voting for the lesser of two evils. Schematically, this is how democracies must function, and do in fact function.

However, although neither the rotating solution of pure distribution games nor electoral rotation is relevant to real-life redistribution under majoritarian democracy and there is no cycle, still it is always the same half of society that it is exploited by the other half. Stopping this exploitation by inserting an appropriate rule in the constitution would not simply put an end to futile and costly back-and-forth sloshing of wealth, as Buchanan and Congleton appear to believe. If generality were such a rule and had the effect in question, it would permanently hurt the exploiters and permanently help the exploited. It could hardly be Pareto superior. If it were, we should have to wonder why society has never groped toward adopting it.

Generality

Politics by Principle proposes that constitutions should prohibit the makers of collective choices—whether democratic majorities, dictatorships, or anything in between—from resorting to other than general rules in determining distributions of benefits or burdens.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Such reform may or may not be feasible. Assuming for argument's sake that it is, principle would replace interest, and the reformed constitution would be going against the grain, forbidding the very things the decisive force—for example, the majority coalition—most wishes to do. What entitles us tacitly to suppose that such a constitution could be durably enforced? Following the public choice tradition of treating constitutional rules as being on a different plane and being determined by different interests from the "in period" choices such rules permit, Buchanan and Congleton do not treat this problem. Even if such difficulties were not prohibitive, but could be overcome by paying whatever enforcement costs were required, it is legitimate to ask whether such costs would not offset the savings that the greater political efficiency of general rules promises to bring.

However, this objection is but a quibble compared with the major and fundamental one that concerns the very concept of generality. Indeed, the Devil's Advocate submits that it is logically impossible to formulate constitutional clauses whose strict respect would constrain the lawmaker from passing any rule on the sole ground that the rule would violate the generality principle. Generality cannot be sufficiently defined to allow us to tell rules that are general from rules that are not.

Statute laws, judicial precedents, conventions, bylaws, customs, taboos, decrees, regulations, and administrative directives are all *rules* of varying degrees of stringency and precision. Every rule resembles every other in at least one respect: each rule is an invariant relation between a class of defined circumstances (here denominated "cases") and a set of consequences (sanctions for the breach of behavior norms; distributions of benefits and burdens) that must result if the rule in question is applied to the case within the class in question. The same cases must bring forth the same consequences if the rule is in fact applied.

Buchanan and Congleton plead, in the name of fairness and what they call "political efficiency," for rules in all domains, and notably in the political domain, to conform to the generality principle. If rules applied in politics were general, some of the worst features of majoritarian democracy would be purged or at least greatly mitigated. Distributions would be stabilized; they would become better in the normative sense of being less dependent on the will of the politically stronger battalions. The socially wasteful expenditure on promoting distributional interests would cease. The outcome would be Pareto superior; no coalition under majoritarian democracy could expect to do better, taking good years with bad.

What meaning is being imputed to such a promising principle? When the authors speak of "treating like cases alike" or "equal treatment under the law," they seem to be saying, uncontroversially, that a rule must be applied to all the cases to which it is applicable, that there must be no positive or negative deviations in treatment between such cases according to arbitrary whim, fear, or favor unprovided for in the rule itself. In short, they state that a rule is a rule—an analytic statement that conveys no addi-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tional information about generality, for in this sense every rule is a perfectly general rule and conforms to the principle postulated.

More controversially, they use "generality" in a different sense when they say that general rules do not discriminate among persons. Two objections arise. One is a shade pedantic but not wholly superfluous, for it adds some clarity to what might easily degenerate into confused rhetoric about equal "rights"—though, to their great credit, Buchanan and Congleton never resort to such vocabulary. The objection is that rules do not directly target persons, much less discriminate among them, but are directed at cases in which persons may play various roles. Breaches of contract, for example, are cases in a class to which a rule applies and provides for certain consequences. In such cases, particular roles are played by plaintiffs and defendants. The rule discriminates between them. For example, it places the burden of proof on one party rather than on both of them. Likewise, a rule about lawmaking may attribute certain powers to representatives, others to senators. There is discrimination between them, but the rule about lawmaking is a general one for all that—if the term *generality* is indeed more than a tautology.

The more serious objection provoked by the authors' recurrent characterization of generality as non-discrimination is that this requirement contradicts the very logic of rules. Their function is to separate the cases that require a particular uniform treatment from the rest of the universe of cases that do not require the same treatment. Non-discrimination is inconsistent with treating like cases alike and different ones differently, except in the logical limit where from some infinitely distant celestial perspective, every case is like every other.

The more nearly we approach this logical limit, the more curious is the resulting "generality," understood as non-discrimination. Suppose a rule requires that the destitute be given food and shelter by some of those who have these things. Generality is doubly violated, both in the entitlement to alms and in the selective nature of the obligation to give. To satisfy generality, either nobody must give nor get or all must give and get. There are a few sound reasons for the first alternative, though most people would think the balance of arguments is tilted against it. But there are no good reasons speaking for the second version, whose very generality raises the suspicion that satisfying the generality principle, even if it is interpreted as more than a tautology, may not in itself make for better rules.

By way of demonstration, consider alternative rules for distributing punishments. One rule might lay down one punishment for all felons ("off with their heads") and another for minor offenders (a suspended jail sentence). This is obviously not a general rule, discriminating as it does between felonies and misdemeanors—though it is vastly more general than any real-life criminal code with its fine gradations of offenses and punishments. A large step toward greater generality would abolish the discrimination between types of crimes. It would require that all criminals have their heads chopped off or all get a light suspended sentence, but not that some should be beheaded and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

others not. Buchanan and Congleton, incidentally, make the case that general rules are politically efficient in that they reduce the cost of administering the system as well as the wasteful expense people incur to avoid the negative or to benefit from the positive discrimination available under non-general rules. This cost-reducing effect is clearly visible as we move, in the hypothesized case, from a more to a less discriminating rule of distributing punishments. In the true logical limit of the generality principle, however, where every case is like every other and is treated as such, it is the final discrimination, that between criminals and noncriminals, that falls to the ground; everybody's head is chopped off or everybody gets off scot-free.

Although the "treat like cases alike" meaning of generality is no more than a tautology for "apply the rule," the "non-discrimination" meaning clearly does not bear pushing anywhere near its logical limit—a telling sign that it has some defect that comes to light when the meaning comes to be stretched a little. In fact, Buchanan and Congleton are far too intelligent not to sense this problem. They are fairly diffident about providing a working definition that would tell us, in every case, what rule would pass for general.

In one basic case, though, they are perfectly confident about what rule would be the truly general one. This case is the two-person (or two-coalition), two-strategy game of benefit- or burden-sharing, as exemplified by Hume's farmers digging a drainage ditch. A two-by-two matrix describes four alternative allocations of the workload. Along what the authors call the diagonal, both farmers dig for two days or neither digs. Along the off-diagonal, either one digs for three days and the other for one, or the other way round. Which of the two off-diagonal, asymmetrical alternatives is the actual solution depends on which "farmer" is enabled by the political choice mechanism to coerce the other. A rule applied to this type of case is general if it outlaws the off-diagonal solution, so that only the symmetrical, equal-sharing solutions remain available. Both farmers work the same length of time. Obviously, the Pareto-optimal solution among all the symmetrical ones is that they should both work as long as it takes to complete the ditch; but this is not the point. The point is that generality has been found to reside in symmetry.

From here, a promising avenue seems to lead toward a more developed form of generality. The simple version of the rule would say that the farmers, when placed in the circumstances described, should dig the same number of days, preserving one kind of equality, albeit a rather rudimentary one.

However, there is no compelling reason why equality of days worked should be regarded as the best, let alone the sole valid criterion of symmetry. If one farmer is frail, old, or arthritic, or if one has a higher opportunity cost because when he digs he cannot attend to the calving or lambing, or if his end of the ditch has a nasty, sticky, clayey patch, then a rule laying down equality of labor time might well be held to produce asymmetrical shares of pain or cost. Likewise, it might also be argued that symmetry calls for labor time to vary inversely with productivity or directly with the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

benefit each farmer will derive from the drained meadow. Symmetry in the relevant variable must prevail, but why is labor time the relevant variable rather than pain, productivity, opportunity cost, benefit, or something else?

The "equal treatment" schema of a distributive rule is "to/from each, according to. . . ." The blank space is filled in by some function $f(x)$, where x is the reference variable common to a class of cases, deemed relevant for holding that those cases ought to be treated alike, and differently from other cases. The treatment is coded in $f(x)$. If x is a constant, the rule becomes "to/from each that is x, the same" (that is, absolute rather than proportionate equality).

What this formula fails to decide is whether the relevant variable is x, y, w, z, or none of them. Which, if any, meets the generality principle? Don't they all do so despite being mutually inconsistent?

One of the most famous dialogues in *Through the Looking-Glass* could well have been written about symmetry, non-discrimination, and the generality principle: "When *I* use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean—neither more nor less." Alice is doubtful about this declaration: "The question is," said Alice, "whether you *can* make words mean different things." But because it is a matter of opinions, feelings, and "values," not of "facts," which variable is the relevant one that makes one case like another and unlike a third one, and because different people may legitimately hold different views, generality can mean neither more nor less than what each chooses it to mean. Alice is wrong, and Humpty is right.

Before like cases can be treated alike, it must be decided which case is like which other case. Any one case is described by an indefinitely large number of variables, many of which would be dismissed as unimportant by most reasonable people, leaving a number that are important for at least some people. Every case is like every other, because all are "cases." A rule incorporating a reference variable is applicable to all cases that are relevantly described by that variable. These are, then, the "like cases" that the rule treats alike. Many things can be said about the chosen variable: that it is not as relevant as some other, that it is insufficiently inclusive (hence discriminating) or too inclusive (hence indiscriminate, perhaps absurdly so). Ultimately, however, all such observations are intrinsically subjective and can be reduced to my say-so against your say-so. My general rule is your special one; my non-discriminating rule is your indiscriminate one. How does a constitutional court tell my generality from yours?

The inconclusive search for generality is inseparable from arbitrariness and discretion. Between the two extremes "every case is like every other" and "no case is like any other," certain cases are like certain others if one variable is chosen as relevant for rule-making, and other cases are like yet others if relevance is judged differently. The champions of each rule will claim that theirs is the truly general one, but such claims are irrefutable and function as value judgments.

What would be the general rules of public finance? Buchanan and Congleton consider that to ensure generality, the relevant variable for the rule governing transfers

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of all kinds should in fact be a constant, namely, "human being"; whether pauper or millionaire, each should get the same poll grant. However, to ensure generality on the revenue side, the relevant variable should be "income," and the rule should be that all incomes are taxed at the same flat rate (making some people pay more tax than others). Rival "political entrepreneurs" might well appeal to some constitutional court against this rule, arguing that a rule that does not discriminate between incomes but taxes them all at the same rate does manifestly discriminate among income recipients, by treating bachelors and the rich more favorably than heads of large families and the poor, or by failing to compensate for positive and negative externalities associated with the earning and spending of certain incomes, and so forth. Who can decide whether generality requires, permits, or excludes taking account of such matters? And if on the expenditure side a poll grant satisfies generality, why does an income tax (whether flat or progressive) and not a poll tax satisfy it on the revenue side?

The answer seems to be that Buchanan and Congleton seek rules that combine a measure of simplicity and inclusiveness with a curb on redistributive infighting without being hopelessly impractical (as combining the poll tax with the poll grant would be). Once they have selected rules likely to fill this bill, they call them "general," or more general than alternative ones. But this approach involves arguing from desirable effects to generality, rather than from generality to its desirable effects. Their rules are good rules, perhaps the best one can think of if one shares their political predilections. The Devil's Advocate does. Yet he would not be doing his job if he did not insist that although the tautological sense of generality ("a rule is a rule") is unhelpful, no meaningful sense of generality is as yet in sight, to be proposed as a formal constitutional constraint on admissible rules. Disappointingly, legislating for generality seems to be about as effective, and as constraining, as legislating for the common good.

Suppose, however, that the defense of generality were to admit that ultimately it is a value judgment to say that one rule applicable to one class of cases is general, another applicable to another is not, or is less so; but then to point out that everybody's value judgment rejects as a basis for classifying the cases certain notorious "reference variables," such as the race, sex, color, or religion of the persons playing certain roles in a class of cases. Would this approach not serve to ward off the charge of subjectivity and special pleading, and provide an unassailable, firm foundation for generality to rest on? Such a universally rejected set of variables can tell the constitutional court that rules differentiating between cases according to these variables are not general, if indeed generality is no more and no less than "general approval," that is, unanimity in value judgments. However, the rejected set cannot help determine which of the countless remaining, actual or potential, rules differentiating between cases according to the countless remaining unrejected variables is general and which is not. Moreover, whatever the foundation of the taboo variables, it is not a firm but a shifting one, contingent on cultural change. Currently taboo variables are liable to be eroded or swept

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

away by the next wave of political correctness, whose reigning value judgments might well seem outrageous, and outrageously un-general, to our own generation.

Conclusion

Here, the Devil's Advocate rests his case. Buchanan and Congleton have had their day in court. Additional submissions may come, from them or from sympathizers or adversaries, believers or agnostics, before the jury can retire. An interim summing up, however, may be in order at this stage.

Idealism or intellectual convictions persuade Buchanan and Congleton that constitutions determine politics, rather than the other way round. If so, it may be possible to purify politics by constitutional reform, making both the winners and the losers of the old, sordid game of political tug-of-war better off. Enshrining the right clause, hitherto missing, in the constitution would force people willy-nilly to give up the politics of interest. Generality is said to be the clause that would achieve this result. Only rules that satisfy generality in governing distributions of benefits and burdens, rewards and punishments should be constitutionally admissible.

In treating like cases alike, all rules satisfy the generality condition; it is, in this sense, a tautology. Is there another, meaningful sense that would permit rules that are general to be distinguished from those that are not? Does generality require us to treat every case like every other? Or does it permit us to treat each case on its merits as unlike every other? If the answer to both questions is "no," where between these extremes does generality lie? Inclusiveness and non-discrimination, besides their logical and semantic defects, raise the difficulty that equal treatment of cases according to one variable will normally entail their unequal treatment according to other variables—offering free public education to all children treats families with children better than the childless, and so on through endless examples. What is deemed to satisfy, and what to violate, the generality principle does not appear to rest on any intersubjective criterion but ultimately on somebody's value judgment. The question to be decided, then, is whether a proposition whose meaning is contingent and discretionary—like the value judgment that lies behind it, with no stronger claim to validity and truth than its rivals—can function as a major constitutional constraint on the domain of collective choice.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

REVIEW ESSAY

Race Policy in Three American Cities

LINO A. GRAGLIA

In the 1960s, America underwent a revolution in race relations, removing all legal obstacles to black advancement. The U.S. Supreme Court's 1954 *Brown v. Board of Education* decision prohibited racial segregation in schools and, it soon became clear, all official race discrimination. In the 1964 Civil Rights Act, Congress ratified and made effective the *Brown* nondiscrimination principle and extended it even to private discrimination, as in employment, public accommodations, and by recipients of federal funds. The 1965 Voting Rights Act was drastic but effective, finally guaranteeing to blacks the right to vote. The 1968 Civil Rights Act, prohibiting race discrimination in housing, pretty much completed the task of banning discrimination, a magnificent achievement hardly thought possible a short time before.

Great as the achievement was, it soon became apparent that the ending of legal racial discrimination would have little immediate impact on the lives of many blacks, particularly the worst off. In a sense they were even worse off, in that it began to appear that their condition was less the result of societal disadvantage than of personal characteristics. As Edward Banfield pointed out in *The Unheavenly City: The Nature and Future of Our Urban Crisis* (1970), the condition of the worst-off blacks would be little affected if by some miracle they became white overnight. In any event, the immediate effect of the civil rights revolution seemed to be, surprisingly enough, not to end or lessen but to increase black discontent. The first response of many urban blacks to their new guarantee of equal treatment was, it seemed, not gratitude but

Lino A. Graglia is the A. Dalton Cross Professor of Law at the University of Texas School of Law.

The Independent Review, v.IV, n.1, Summer 1999, ISSN 1086-1653, Copyright © 1999, pp. 119–132

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

anger, leading them to riot, loot, and burn down their cities, thereby increasing both their own misery and the disaffection of whites for years to come.

We have no more pressing need than to understand how our nation's successful efforts to remove legal obstacles to the advancement of blacks had the effect of increasing racial strife and hostility and worsening the condition of many blacks. It is clear that the worsening trend in race relations must be halted if the country is not to be torn apart.

Someone Else's House, America's Unfinished Struggle for Integration: The Effects of the New Racism (New York: Simon and Schuster, 1998), by Tamar Jacoby, a writer on social issues and former editor of the *New York Times,* is a detailed history of race relations in three American cities—New York, Detroit, and Atlanta—from the late 1960s to the present. In essence, she provides three case studies of how our race relations reached their present dangerous state, showing us not so much what to do as what not to do to keep the situation from deteriorating further. In each case, liberal public officials and community leaders sought to increase racial harmony and integration and thereby to improve the condition of blacks by adopting race-based policies that proved to have the opposite effect. The single most important step toward improved race relations, Jacoby's book shows, would be simply to terminate the failed race-based policies of the past, policies that necessarily have the consequence of increasing racial consciousness, separatism, resentment, and strife.

New York City

Jacoby begins with the story of the devastation wreaked on New York City by the policies of John Lindsey during his eight years as mayor, aided and abetted by McGeorge Bundy, president of the Ford Foundation. The year before the 1965 mayoral election (and two weeks after the signing of the 1964 Civil Rights Act), Harlem erupted in four consecutive nights of rioting and looting following the shooting of a black youth by a policeman in the course of law enforcement. The depth of the problem was indicated by the fact that "virtually all black leaders with a base in Harlem found ways to justify and applaud the rioters" (p. 73). There also seemed to be a surprising degree of approval of the riots from ordinary Harlem residents. As one put it, "White folks respect us more when they find out we mean business"; smashing the plate glass windows of stores convinces whites that "Those Negroes are mad! . . . And for a little while, they will try to give you a little of what you want" (p. 73). In fact, however, Jacoby points out, whites in New York City had already been giving blacks a good deal of what they wanted. Although blacks accounted for one-seventh of the city's eight million people, one-half of the city's budget was being spent on them "for welfare, schooling, public housing and the like" (p. 83).

Lindsey campaigned on his goodwill, his "general, well-meaning determination to do the right thing by the black man" (p. 79). The focus of his campaign became the need

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

for a civilian police review board. His opponent on the Conservative Party ticket, William F. Buckley, Jr., put forward "the serious idea . . . that government could not solve all the problems blocking black entry into the mainstream—could not eradicate illegitimacy or make rebellious teenagers into scholars" (p. 80). Jacoby recognizes that Buckley spoke the truth "that many blacks were not prepared to compete in the mainstream, that the black crime rate was soaring, hurting no one so much as other blacks" (p. 81). Perhaps nothing better illustrates the strong disincentives to a frank discussion of race issues than that Jacoby nonetheless goes on to accuse Buckley of "mischievous race baiting" (p. 81), "mean-spiritedness" (p. 81), and running a "pandering campaign" (p. 80).

Realism and candor are the central values of Jacoby's book, yet perhaps in the interest of maintaining an appearance of moderation and balance, she often writes as if she thinks realism can be overdone. Thus, she accuses Buckley of failing to "try to talk to liberals and convince them with reasonable arguments" (p. 81). But she had just quoted Buckley's statement, apparently with approval, that any attempt to discuss the problem of, say, black illegitimacy with liberals would cause them to "either simply vanish from the room in a cloud of integrated dust; or else they will turn and call *you* a racist" (p. 81). The core of our race problem, as her book amply demonstrates, is the absolute commitment of liberals to white racism as the only acceptable explanation of black difficulties and the impossibility of shaking this view by reasonable arguments.

The "race relations" problem the Lindsey administration faced and the country still faces is essentially the problem of how to bring more blacks fully into the mainstream of American life. More specifically, it is how to deal with the social pathologies—illegitimacy, crime, academic failure—characteristic of the so-called black underclass. The defining characteristic of the 1960s was the belief that there are no social problems, including racial problems, that cannot be solved by more law and government. The need was simply to wage a "War on Poverty"; poverty could be defeated by government action and its effects would thus be removed. The fundamental need, according to liberals, was for whites to convince blacks of their goodwill by accepting responsibility for black problems—attributed to past and continuing oppression—and demonstrating their determination to solve them.

The need, in a word, was for appeasement. It became obvious that equality of opportunity would not quickly produce equality of outcome for blacks; the latter would have to be produced, therefore, by other means. Inequality of outcome caused the black anger that led to threats of violence and the necessity of appeasement. Blacks could be appeased, it was hoped, by preferential treatment in schooling, employment, and contracting, and such symbolic gestures as Black History Month and making the birthday of Martin Luther King, Jr., a national holiday and putting his name on a major street in every city. Nowhere was a policy of appeasement adopted and implemented more fully than in New York City under Mayor Lindsey. The results, Jacoby makes clear, should be sufficient to establish conclusively that it is the precise opposite of the policy that is needed.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"If the youth of Watts and Harlem had not felt so powerless," Lindsey believed, "they would have felt no need to rampage through their cities" (p. 89). The need, therefore, was for "ghetto empowerment" (p. 88), the turning over of the new War on Poverty social service programs to local black organizations and leaders. In search of such leaders, Lindsey's aide Barry Gottehrer frequented such places as the Glamour Inn, a "seedy one-room lounge on 127th Street, frequented mostly by gamblers and pimps" (p. 107). He "immediately fell in love with the place" and spent "as many as four nights of his week there, trying earnestly to convince regulars that rioting 'would hurt the poor far more than the rich' " (p. 107).

What led Gottehrer to believe that the rioters were concerned with helping the poor is not indicated. As a result of his efforts, the Lindsey administration soon had "every street-corner speaker in Harlem on its payroll" (p. 106). A "fairly typical recruit" (p. 19), who went on to become the head of the Brooklyn chapter of CORE (the Congress of Racial Equality) and to play a continuing role in New York City racial disputes was Sonny Carson. Now in his mid-twenties and "brimming with unfocused anger at the world around him, . . . he was already stealing pennies from newsstands" in elementary school and "by junior high, he had become an accomplished mugger" (p. 19). After spending time in a state reformatory, selling drugs, and running an illegal gambling joint, he found his true calling in racial politics.

Carson favored blacks' burning their communities as "a good way to get the kind of attention we needed" (p. 122). This attitude made him "popular in the ghetto" and "exactly the kind of local leader Gottehrer was looking for" (pp. 122–23). Robert Kennedy appointed him to the board of the Bedford-Stuyvesant Redevelopment Corporation, explaining that "these are the people we have to reach" (p. 122). Carson might seem an unlikely ally in the cause of preventing riots. Gottehrer doubted "he ever stopped anything" but considered it enough that "he didn't always inflame it" (p. 124). Claiming that some crisis was about to break out, Carson would call Gottehrer to meetings only to show that he could.

On one occasion Gottehrer, accompanied by three black policemen, attended a meeting Carson had called to demonstrate his power before a group of reporters. "Unwilling to argue publicly with a black spokesman," Gottehrer "felt obliged to agree with Carson's indictment of the system and promise to try to make some of the changes he was demanding" (p. 130). He "watched passively as Carson tongue-lashed the three black cops and accused them of betraying their race" (p. 130). One of Carson's "tougher-looking lieutenants decided to make the newspapermen squirm a little, too." He picked up a photographer's "camera from the chair next to him and smashed it violently to the floor. The journalist, terrified of a confrontation, looked away as if nothing had happened—and neither Gottehrer nor the humiliated cops moved to lift a finger" (pp. 130–31). "Plainly enough," Jacoby concludes, "the more menacingly [Carson] threatened Lindsey and Gottehrer, the more eager they were to mollify and appease him" (p. 125).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Appeasement, it turned out, hindered rather than advanced the cause of improved race relations. "[Lindsey] and his well-meaning aides had not just appeased the city's nihilistic militants; they had encouraged and legitimized and amplified these men, giving them a reach and power they could never have hoped to achieve on their own. . . . Thanks to Carson and others like him, many blacks were only angrier than when the riots started," whereas whites became "less sympathetic to blacks' problems and less inclined to help" (p. 130). Worst of all, Carson's example encouraged other black spokesmen to join in "an unending ritual of protest that would do nothing to close the gap between black and white" (p. 130).

Riots that took place across the country in the summer of 1967 led President Johnson to appoint a National Advisory Commission on Civil Disorders to investigate the cause and recommend solutions. Although officially headed by the "staid and centrist Illinois governor Otto Kerner," it was dominated by "the galvanizing presence of the crusading mayor of New York" (p. 132). In what Jacoby calls "the last gasp of sixties liberalism" (p. 134), the commission issued a five-hundred-page report that amounted to a "*mea culpa* to the effect that white racism is the cause of the problems of the ghetto: 'White institutions created it, white institutions maintain it, and white society condones it'" (p. 141). The report recommended more welfare programs, including a guaranteed annual income, that would require, as it stated, "unprecedented levels of funding" (p. 142). "Rather than clearing the air," however, "the *mea culpa* only inflamed black anger, boosting the sense of grievance and separatism already poisoning the atmosphere in black America" (p. 144). It "signaled to young blacks that they were right to blame their frustrations on white society . . . [and] lay every setback, no matter how personal, at the door of the white world" (p. 144). It "effectively fixed the terms of future debate about race. From now on . . . black anger and black threats . . . would be the engine that would drive relations between blacks and whites" (p. 145).

Perhaps the climactic event of Lindsey's mayoralty was his decision, supported by McGeorge Bundy and Ford Foundation funds, to decentralize and provide for "community control" of the public schools, as a manifestation of his belief in "empowerment." The movement for community control of schools, hospitals, police, and welfare services was apparently begun by black separatist Malcolm X and endorsed by Stokely Carmichael in his book *Black Power*. "For ghetto activists," Jacoby notes, "community control held out a promise of black teachers and a 'black curriculum' " (p. 159). As one group of activists, seeking to oust whites from teaching at a Harlem school, put it, "We got too many teachers and principals named Ginzberg and Rosenberg in Harlem" (p. 170). Lindsey and Bundy, however, managed to believe or hope that by increasing a "sense of belonging" (p. 159), community control would further racial harmony and integration. "In the name of empowerment, Ford was funding separatists and street gangs, including a Cleveland CORE chapter that championed armed revolution and 'race hatred' " (p. 174). "At the time it seemed an effective means of getting black people involved in solving their own problems," Bundy explained, and "you can't

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

expect effort-free social revolution" (p. 174). Making an end run around the state legislature and the city Board of Education, Bundy freed three of the poorest school districts from public control by funding them as "demonstration school districts" to experiment with community control.

In practice, community control meant control by militant activists, including in particular the ubiquitous Sonny Carson. On the basis of no authority, he announced that he was going to "evaluate" thirty-two teachers in Bedford-Stuyvesant schools, and then declared all but four of them "fired" (p. 173). The superintendent of schools would "see what happens," he threatened, if "those teachers . . . try to come back to our community" (p. 173). Carson and his gang were "regularly entering school buildings and accosting teachers in the halls, telling them among other things, 'the Germans did not do a good enough job with you Jews' " (p. 173–74).

The Ford Foundation could not have found a less promising area for its experiment in community control of schools than one of those it selected, the Ocean Hill–Brownsville section of Brooklyn, adjacent to Bedford-Stuyvesant, where "residents wrestled daily with every imaginable social problem" (p. 176). A "People's Board of Education" (p. 177) was formed by a small ad hoc group of activists, and a devotee of Malcolm X was put in charge. In Bundy's view, the race hatred of the radicals he was funding was the result of white racism and would dissolve with ghetto empowerment. Freeing the schools from the central bureaucracy would, he believed, lead to innovations, rising test scores, and the return of whites to the schools. Ford's aim, enthusiastically supported by the liberal establishment, was to increase minority parents' involvement in their children's schools; the result, however, was to unleash separatist hatred.

The "number one priority" of the Ocean Hill People's Board turned out to be "raising racial consciousness," which to the district's white teachers "seemed more like schooling in race hatred" (p. 186). The "first order of business was to develop a black curriculum: lessons, laced with hostility for 'the power structure,' that only black teachers could teach" (p. 186). Student discipline soon became nonexistent. At a school assembly following the shooting of Martin Luther King, a popular teacher advised the students: "Get your minds together. You know who to steal from. If you steal, steal from those who have it . . . if whitey taps you on the shoulder, send him to the graveyard" (p. 188). Students then roamed the corridors looking for teachers to assault. "People were harassed and beaten," one teacher reported. "From then on, we knew the threats were real" (p. 188).

Matters came to a head in Ocean Hill when the board, "ignoring tenure, seniority and merit ranking" (p. 190), announced the dismissal of nineteen teachers and administrators, all but one of whom were Jewish. The dismissals were enforced by Sonny Carson and his followers, who blocked the teachers' entry to their schools. The board finally found a determined opponent, however, in Albert Shanker, head of the United Federation of Teachers, and a series of strikes followed, one lasting more than a month. The Ocean Hill board was eventually replaced by a state-appointed trustee,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

but the experiment in community control continued, with the city divided into thirty-two districts, each with its locally elected board.

Bundy's "wager—that Black Power could prepare the way for inclusion—had backfired disastrously" (p. 216). He had "bankrolled a band of separatists, then watched, not understanding, as the militants killed all hope of racial harmony" (p. 216). For young blacks, the lesson of Ocean Hill was clear: "Not only could they call on their sense of grievance to justify even the angriest race hatred. But they could win almost anything they wanted from the white world with defiant, disruptive protest of the kind that they had seen in Ocean Hill. 'What I learned from Ocean Hill–Brownsville, [the Rev. Al Sharpton said years later,] was that confrontation works' " (p. 220).

Detroit

As if the story of race relations in New York were not discouraging enough, there is also the story of Detroit. In essence it is the same, the story of attempted appeasement of blacks and its counterproductive consequences. The apparent hopelessness of the very idea of race relations, of meaningful communication between blacks and whites, is perhaps most clearly indicated by the two groups' different reactions to the 1967 Detroit riot, the "bloodiest and most destructive riot of a bloody bitter decade" (p. 238). For the vast majority of whites it meant that Detroit had gone "beyond the point of no return" (p. 238). It is hard to imagine, indeed, how any white's reaction could have been other than that Detroit must be escaped. Blacks, however, "particularly the black middle class, saw the disturbances as a welcome political watershed—not a riot, but a 'revolt' or 'insurrection.' . . . In the black mythology of Detroit, 1967 had become the point that blacks finally stood up for themselves—what *Ebony* magazine called 'the birth pangs' of a new city" (pp. 238–39). What this understanding meant as a practical matter was that blacks saw riots and the threat of riots as a source of power, a potent tool of extortion—and so they proved to be until finally nothing was left to destroy.

Max Fisher, an elderly, wealthy oilman, enlisted Henry Ford II and other business leaders to form the New Detroit Committee in the belief that discussions with black leaders could lead to the solution of Detroit's racial problems. Like McGeorge Bundy in New York, however, the committee members "felt they had to listen to the depth of black alienation" by including radical street leaders, apparently unaware that the radicals' interest lay not in lessening but in exacerbating racial conflict (p. 241). The business leaders soon found themselves listening to such statements as "If you fat cats don't give us what we want, it won't be our places that will be burning next summer. It will be yours," and there had better be "some crumbs on the table" (p. 243).

The committee soon began doling out payments to the militants in the sum of "$10 million in thinly disguised riot insurance" (p. 244). All they succeeded in ensuring, however, was further extortion, lawlessness, and conflict. For example, the "Armed

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Black Legion" wing of the "Republic of New Africa" (p. 244), committed to confrontation with its enemy the police, incited a confrontation at which a white policeman was killed. The police arrested 142 persons, but those arrested were ordered released by a black judge who came to the station house before they could even be questioned. "If a white judge's law in Alabama must be obeyed," he declared, "then a Negro judge's law in Detroit must also be obeyed" (p. 249).

The judge's action was unanimously condemned by whites but defended and justified by blacks. When a black activist at a New Detroit Committee meeting threatened to "burn the city down" (p. 249), Max Fisher, convinced that the city was on the brink of another riot, announced his support for the judge. "It was a hard call, but I was right," he said later. "When you are a leader, every once in a while you have to take a position" (p. 250). "The law," Jacoby notes, "seemed to hold less and less sway in the years after the incident," and "the breakdown of legal authority was making life in black Detroit more and more difficult" (p. 251).

By 1970 Detroit had become a majority-black city, and in 1974 it elected its first black mayor, Coleman Young, "the people's mayor" (p. 296), who would remain in office for twenty years. Under Young, the city deteriorated even more rapidly and permanently than did New York under Lindsey. The difference was that whereas New York's leaders adopted a policy of catering to preachers of race hatred, in Detroit one of the preachers was directly in power, with the enthusiastic support of a black constituency that "thrilled to Young's defiant style and unabashed race consciousness" (p. 307). "He'll tell white people off in a minute," his authorized biographer wrote. "That's reassuring to a lot of black people" (p. 318). The Young administration couldn't clean or light the streets, deliver jobs, arrest criminals, or explain its budget, a columnist wrote; "Still, the people kept on voting for Young—because he said what they wanted to hear about whites and white racism" (p. 346). The blacks were apparently surprised, however, that a policy of hatred for whites should reduce white sympathy for blacks; between 1977 and 1980 the percentage of blacks "who thought that whites could not care less for blacks doubled to 43 percent" (p. 350), which of course provided further basis for their hatred of whites.

The dilemma faced by the city's black leadership on race relations policy is that although the presence and cooperation of whites might be essential to the city's well-being, the driving out of whites made black leadership more certain and secure. Black control was assured in majority and increasingly black Detroit, but Young saw cooperation with the wealthy white suburbs, essential to economic improvement in Detroit, as a threat to his power. Rejection of all attempts at cooperation with the suburbs was therefore a basic feature of his administration. Proposals by liberal suburban white leaders for cooperation on regional water supplies, transportation systems, and so on, even with the suburbs assuming most of the cost, were met with "immediate angry rejection" (p. 317) by Detroit. "Those people who fled to the suburbs in the first place," Young said, "aren't going to help support Detroit now" (p. 316). Young and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

his staff, suburban leaders finally came to realize, "saw metropolitan cooperation as a threat—an act of racial aggression by the suburbs" (p. 317). "Nothing . . . could have done more for race relations or to boost the flagging Detroit economy" (p. 346), Jacoby notes, than proposed transportation connections between Detroit and the suburbs. Negotiations, however, "led only to the usual name-calling" and "Young's now familiar response: 'This is racism. [They're trying] to take over Detroit' " (p. 346).

The second pillar, indeed the first priority, of the Young administration was animosity toward the police. "A former radical and union tough, Young came into office not just seeking reform, but girding for war—race war" (p. 326). "As everyone knows," he said, "law and order is a code word for 'Keep the niggers in their place' " (p. 326). "Crime is a problem," he conceded, "but not *the* problem. The police are the major threat . . . to the majority community" (p. 326). Everything Young said and did encouraged blacks to believe that the law was white and alien and that "fighting racism was more important than public safety" (p. 327).

The result was, of course, as Jacoby's chapter heading puts it, "A Mandate for Anarchy" (p. 322), the end of the rule of law. During the summer of 1976, robberies at gunpoint and knifepoint became common on highways and buses, and even courtrooms became violent. Looting no longer required the excuse of a racial incident but "became an everyday sport: not something reserved for special occasions" (p. 334). A gang called the "Black Killers" rampaged through an expensive hotel overturning tables and stealing purses. The climax was an attack by 150 Black Killers and others on 8,000 concertgoers at the Cobo Hall Convention Center: "Dozens of people were robbed, one woman raped—by fifteen to twenty youths, in a public space" (p. 335). Bands of youths then roamed downtown streets for several hours, breaking windows and looting. Some youths were arrested, but no one would come forward to testify, and no charges were filed. "White perceptions of the city," Jacoby concludes, "already soured by 1967, would never recover from the summer of 1976. . . . It seemed as if the riots had never stopped and were not going to" (p. 336).

The worse Young's policies were for Detroit, the better they seemed for his popularity. In the mayoral election of the next year, "both the Detroit business elite and the national liberal establishment came out for Young in a big way. Henry Ford corralled friends and associates for a thousand-dollar-a-plate fund-raiser at the tony Detroit Club. Prominent blacks flew in from all over the country: Coretta Scott King, Jesse Jackson . . . and a variety of civil rights groups. . . . The mayor won in a landslide" (p. 346).

Atlanta

After New York and Detroit, the story of race relations in Atlanta is mercifully anticlimactic. Atlanta, Jacoby notes, has been "widely regarded as an emblem of improved race relations," the "success story of the civil rights movement," a place where blacks and whites seemed both to prosper and to live "more or less comfortably with each

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

other" (p. 360). Like Detroit, Atlanta became a majority-black city in the early 1970s, and soon thereafter the city elected its first black mayor, Maynard Jackson. Unlike Detroit's black population, Atlanta's seems to have stabilized at just under the supposedly dangerous 70 percent tipping point. Whites have not abandoned the downtown, and economic growth has continued; but race relations, Jacoby found, are nonetheless far from ideal, perhaps best described as "uneasy coexistence" (p. 371). She devotes a chapter to considering whether Atlanta's racial situation is "as good as it gets" (chap. 17, p. 500). After her discussions of New York and Detroit, however, one can be grateful that race relations can get even as good as that.

Like Coleman Young, Mayor Jackson was devoted to "the goal of black empowerment" (p. 367) and therefore quickly turned to a program of "police reform" that was "more concerned with curbing the police than punishing criminals" (p. 368). The result, as in Detroit, was that "the crime rate . . . was out of sight—by the end of the decade, the worst in the country" (p. 368). Jackson also followed Young in seeing "regionalization as a hostile racial ploy to dilute black votes and curb black political power" (p. 369) and therefore opposed linking the city with its wealthy suburbs. At least partly as a result, Atlanta, despite its economic growth, remained "a desperately poor city—by one measure the second poorest in the country (after Newark, New Jersey)" (p. 367). The city bought off the NAACP in a busing suit by turning over the school system to NAACP control, with the result that the middle class, both black and white, abandoned the public schools, "leaving them over 90 percent black and among the nation's worst" (p. 369). During the 1970s, 40 percent of the white population, 70,000 people, left the city, increasing the black share of the population to two-thirds.

Economic growth nonetheless continued in Atlanta, fueled in part by a half-billion-dollar airport renovation. A ring of gentrification kept a substantial number of middle-class whites and blacks downtown, and a second white "downtown" and wealthy residential area developed in North Atlanta. If the city was "not exactly a case study in integration" (p. 372), the races had at least achieved an "uneasy coexistence" (p. 371). This was seriously threatened, however, by a series of murders of poor, black children, twenty-nine in all, that took place in 1979.

The ready assumption by many blacks was that the murderer was white. James Baldwin, for example, "dismissed" expressions of white concern as inadequate compared to the "reaction to the fate of the hostages in Iran" (p. 374). Jesse Jackson topped him by declaring that "it is open season on black people" and that responsibility for the murders could be traced to opposition to affirmative action and to "Ronald Reagan's conservative politics" (p. 374). That the murderer, Wayne Williams, turned out not to be white came as a huge disappointment, and "black interest in the case visibly plummeted" (p. 375). Even, or especially, middle-class blacks found the outcome difficult to accept, revealing a black–white chasm, Jacoby concludes, that "no one in the nation knew how to bridge" (p. 376). More to the point, it would seem to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

indicate a suspicion of whites by blacks so great as to leave whites no response except to seek greater distance.

Jacoby's discussion of race relations in Atlanta focuses on the use of and demands for racial preferences in city contracting, particularly in connection with the construction of a light-rail system, the expansion of the airport, the renovation of the shopping and entertainment complex known as Underground Atlanta, and a downtown building boom. Racial preference in contracting by local governments apparently began in Atlanta with the Metropolitan Atlanta Rapid Transit Authority (MARTA) under Jackson's predecessor, and it was expanded and extended by Jackson and his successor, Andrew Young. Racial set-aside programs in public contracting are little more than an invitation to fraud. If blackness is made a qualification for obtaining a government contract, one must find ways to appear to be black: "The preferred term in Atlanta was 'rent-a-skin'; a white-owned company nominally headed by a black man in order to snag a MARTA contract" (p. 384). Contracting with the city required a "joint venture" with a black: "I've got the money. I've got the black" (p. 420) meant one was ready to bid.

In 1984, on a suit by white contractors, the Georgia Supreme Court held an Atlanta racial preference ordinance invalid under a city charter provision that required that contracts be awarded to "the lowest and/or best bidder" (p. 441). Mayor Young's response was to order a moratorium on city contracting until the charter could be amended, which it was by adding the word "responsible" (p. 442) to the statement of bidder qualifications. The use of racial preference was then not only continued but expanded by way of increases in minority set-asides for city business from 25 percent to 35 percent. On a second suit, racial set-asides were again declared invalid by the Georgia Supreme Court, following the 1988 U.S. Supreme Court's decision in *Croson v. Richmond,* which invalidated a similar program in Richmond.

The *Croson* Court recognized that "classifications based on race carry a danger of stigmatic harm" and "may in fact promote notions of racial inferiority and lead to politics of racial hostility" (p. 451). Racial set-asides were nonetheless allowed by the Court when shown to serve the "remedial" purpose of correcting past discrimination by government. This unjustifiable exception—it was not limited to remedying discrimination against specific individuals—gave birth to a new industry: the making of studies, paid for by a city, to show just how racially evil the city had been. Atlanta undertook such a study at a cost of more than half a million dollars. A year of work by more than a dozen experts produced an eight-volume, eleven-hundred-page report that purported to make the requisite findings. In fact, there was "not a scrap of hard evidence that the Atlanta city government had discriminated against black contractors" (p. 456). No case was found of a black firm being the lowest bidder and not getting the contract. The report was sufficient, however, for Atlanta not only to reinstitute set-asides, but to extend the requirement even to private contracting. As one black councilman, to a "chorus of cheers," told an audience made up largely of black professionals, "I am prepared to die for affirmative action, so help me God" (p. 453).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

A 1986 U.S. Civil Rights Commission study of set-aside contracting programs found them rife with fraud: 20–25 percent of the beneficiaries in state and local programs were found to be shams. Of the $70 million supposedly subcontracted to black-owned firms in the Atlanta airport contracts, 54 percent was spent in some form of sham. More to the point, the commission found that the programs did not serve their stated purpose: "Set-asides do not appear to have encouraged the formation of minority-owned firms" (p. 436). A study by a Georgia institute, though strongly supportive of set-asides, concluded that more than a decade of preferences in Atlanta contracting had produced "no more than a dozen clear-cut cases of [minority business] success" (p. 448). In fact, Jacoby concludes, "the city's joint venture efforts, public and private, had helped enrich only a handful of already wealthy men" (p. 467). For example, more than half of the money that did go to black firms in the Atlanta airport contracting went to a single, already established and successful firm in no need of preferences. Of the $14.2 million spent on set-asides in one year, 82 percent went to ten already well-established and politically connected firms. The effect of the set-aside programs, Jacoby concludes, was to increase cynicism and interracial distrust. Because of the programs it was unlikely, one observer noted, that "most whites will ever see civil rights the same way again" (p. 495).

Race relations that nonetheless remained relatively peaceful in Atlanta through the 1980s may more recently have taken a turn for the worse. The 1992 Rodney King verdict was the occasion for an outburst of violence in downtown Atlanta by a gang of black college students and other youths. Although decidedly minor by Los Angeles standards—less than $100,000 damage was involved—"the event was a turning point" for the central city and took a severe "psychological toll" (p. 498). The attitude of black youths Jacoby interviewed who had taken part in the rampage reflected the attitude that had become standard elsewhere. With scant education and no prospects, "they were still burning with the anger [the event] had brought to the surface" (p. 499). "We gonna shake this mother up" (p. 499), one warned. "Blacks took this stuff in the 60's," said another, "we ain't gonna take it—even if we gonna die" (p. 499).

Most ominous for the future of race relations in Atlanta, as in the nation, however, has been the advent and growth of "Afrocentrism"—virtually a prescription for race war. Asa Hilliard III, a professor at Georgia State University in Atlanta and a leader in the Afrocentrist movement, was "widely lauded around town as a distinguished scholar and role model for young blacks" (p. 508). Along with Leonard Jeffries, a professor at the City College of New York, Hilliard is one of the original "melanists" (p. 508). Apparently confusing melanin, a pigment that darkens the skin, Jacoby points out, with neuromelanin, a brain chemical, they teach that it makes blacks generally superior to whites. "Melanin theory caught on big in Atlanta" (p. 508), Jacoby reports, and at Hilliard's urging the school system adopted an "African Infusion Curriculum" (p. 508) that would weave Afrocentric teaching into all subjects.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Repeating the error of McGeorge Bundy in New York and Max Fisher in Detroit, Atlanta acceded "to the demands of the angriest and most radical black leaders in the field" (p. 510). In effect, "Hilliard's explicit hatred of white people" (p. 510) became public education's central subject, the ultimate fruit of the identity politics that began with the acceptance of racial preferences. "Affirmative action and the new color consciousness and the anger that come with it," Jacoby concludes, "are breeding a generation of racism far more virulent than anything that came before it" (p. 512).

What Hope for the Future?

Jacoby ends her long and devastating discussion of the state of race relations in New York, Detroit, and Atlanta with a very brief chapter, "Where Do We Go From Here?" She recognizes, in something of an understatement, that "many of us are beginning to give up hope that there is a way out" (p. 530). Indeed, given the unrelieved but all too accurate grimness of the picture she has painted for 530 pages, it is difficult to see that any other conclusion is possible. She purports to see some reason for hope, however, in each of the three cities. In New York, Mayor Giuliani has come down hard on crime, abolished a special office for black issues, largely dismantled community control of the schools, and "refused to play cat and mouse with race men" (p. 531). Detroit qualified as a federal empowerment zone, which would bring in large grants, tax breaks, and new investment, though the city council remained "reflexively anti-business" (p. 535). In Atlanta, the racial picture "is still much better than either New York or Detroit—or most of America, for that matter" (p. 535), which is faint praise. Jacoby quickly undercuts even this tepid optimism, however, by noting that "the misguided white impulse to win blacks' favor by dwelling on their alienation," the root cause of our race problems, "is more common than ever now" (p. 538).

Jacoby concludes with a brief statement of recommendations for improving race relations. The first and hardest step, she says, is "deciding that integration is what we want" (p. 543), but she qualifies the statement by saying that this is "not much of a leap" (p. 543), and she finds recognition of the need for integration even among participants in Louis Farrakhan's Million Man March. In fact, however, no difficult decision as to the need for integration is involved for an overwhelming majority of white Americans, who have no doubt that a viable multiracial society is not possible if the population is to be divided for a multitude of purposes into separate racial groups. This conviction does not mean, of course, that every institution or activity must be racially mixed or "balanced," as much as we may be pleased when that kind of intermingling happens to occur. Indeed, it means the opposite, that we must cease to be concerned with racial proportions and return to the principle, violated by racial preferences, that people, as Jacoby puts it, must be treated "as individuals, not as members of a group" (p. 541).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Jacoby is undoubtedly right that "integration won't work without acculturation" (p. 539), that is, a "change in people's habits, their attitudes toward school, work, and the law" (p. 539). She recognizes, however, that "many blacks don't like the ring of this—the idea of values imposed from the outside" (p. 539). In fact, most of today's black leaders are intensely resistant to any suggestion that the source of blacks' difficulties is internal, the result of their own behavior, rather than external, the result of white racism. In any event, it is extremely difficult to formulate and implement concrete, practical programs to bring about the necessary changes. It may be that we couldn't "win the War on Poverty" (p. 539) because of deficiencies in acculturation, as Jacoby says, but the experience gives us no reason to think we can be more successful with still more such social welfare programs.

Along the same line, Jacoby argues that self-help and reliance on the free market will not be enough to solve the problems faced by blacks. There is a need for government funding and tax breaks to promote social services, she thinks—though preferably on a small local scale rather than a large federal scale. We have, however, already spent unimaginable sums on programs of social services to the poor and to blacks in particular, and it is arguable that the expenditures have been not only unhelpful but counterproductive. There is also no basis for Jacoby's optimism that racial problems might be eased by such measures as finding "ways to sponsor achievement-oriented [black] students" (p. 540). There has been no shortage of efforts along these lines, but they encounter the insuperable difficulty that the number of such students is very limited.

Jacoby is surely correct that our present dire situation in race relations is due to "feckless leadership: racemongering demagogues [and] patronizing civil elites" (p. 541–42). There is also no quarreling with her assertion of a desperate "need for better leadership, both black and white" (p. 541), leaders who will, first of all, "stop sending the message that because of racism there is no point in trying, that blacks are fundamentally different from whites and right to ground their lives on a bed of old grudges" (p. 542). As in the case of acculturation, unfortunately, it is difficult to see how the necessary changes can be brought about.

Jacoby does have one recommendation, however, that is clear, specific, and capable of implementation. The central message of her book is that essential to any hope of improved race relations is the abolition of all racial preferences. The use of racial preferences, the experience of New York, Detroit, and Atlanta proves, is "playing with fire" (p. 541), a "recipe for alienation and resentment" (p. 541). "The law cannot work," she concludes, "unless it is color neutral, and the government should not be in the business of abetting or paying for the cultivation of group identity" (p. 541). The great value of her book is that it fully demonstrates and documents the validity of these conclusions.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

BOOK REVIEWS

✦ Desperate Deception: British Covert Operations in the United States, 1939–1944

By Thomas E. Mahl

Washington, D.C.: Brassey's, 1998.
Pp. xiv, 257. $26.95.

From 1939 to 1941, Americans engaged in one of the bitterest debates in their history: whether or not to aid Britain at the risk of entering World War II. Seldom had the nation been so divided. Each step taken by the Roosevelt administration brought the United States closer to war: repeal of the arms embargo in 1939, the destroyers-for-bases deal in 1940, and a host of moves in 1941, including the Lend-Lease Act, the occupation of Greenland and Iceland, the presidential order to shoot German submarines "on sight," the arming of merchant vessels, and the removal of the ban of entry into Allied ports. Although the United States became a full-scale belligerent only with Japan's attack on Pearl Harbor and Germany's declaration of war, it had long been involved in an undeclared conflict.

The president's foes argued, as did a school of postwar historians known as revisionists, that Franklin Delano Roosevelt had never leveled with the public concerning the obvious implications of his proposals. Congresswoman Clare Boothe Luce put the issue most succinctly: FDR "lied us into a war because he did not have the political courage to lead us into it." Besides, so they claimed, the president was placing the interest of another nation, Great Britain, ahead of his own.

"Isolationists," as Roosevelt's opponents were simplistically and inaccurately called, always insisted that the besieged British were manipulating American policy to their advantage. The pundit H. L. Mencken accused the United States of "acting

BooksNow To order any book reviewed in this section please call (800) BOOKS-NOW (266-5766) or (801) 261-1187 and ask for extension 1302. Visa, MasterCard, or AMEX accepted. Or visit www.BooksNow.com/independent.htm on the Web.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

precisely like a British colony." The *New York Daily News* proclaimed America "unofficially part of the British Empire."

Certainly, from the time the great debate of 1939–1941 was launched, anti-interventionists publicized the fact that their leading foes often belonged to an Anglo-Saxon Protestant elite. With many members living in the Northeast and having been educated at Ivy League schools, that elite possessed extensive ties to Britain, practically honoring it as the "mother country." When, for example, Sarah Delano Roosevelt, the mother of Franklin, greeted the king and queen of England at Hyde Park in 1939, she welcomed them with the words, "We are cousins." In her published diaries, Anne Morrow Lindbergh expressed irritation at "the smart women wearing British lions conspicuously on their bosoms" (*War Within and Without: Diaries and Letters, 1939–1941*. New York: Harcourt Brace Jovanovich, 1980, p. 157).

Only long after the war ended, however, did tangible evidence of covert American–British collaboration come to light. H. Montgomery Hyde, a British intelligence operative during the conflict, wrote a eulogistic biography of his boss, Sir William Stephenson, the Canadian-born industrialist who ran British military operations in the Western Hemisphere (*The Quiet Canadian,* 1962; Amer. ed., *Room 3603: The Story of the British Intelligence Center in New York during World War II*). The book showed Stephenson's intimate ties to the Roosevelt administration.

More sensational claims surfaced when in 1976 the Canadian journalist William Stevenson (no relation) came forth with *A Man Called Intrepid,* in which his namesake took credit for everything from a hit job on an anti-interventionist oil speculator to secretly creating such pro-British front groups as the Fight for Freedom Committee. The back cover of the paperback is scarcely less modest concerning its subject, declaring, "He masterminded the international intelligence network that halted the Nazi juggernaut." Little wonder that George T. Eggleston, former editor of the anti-interventionist monthly *Scribner's Commentator,* found in the Intrepid book evidence for what he had always suspected, namely, that the British had engineered American involvement in the war (see *Roosevelt, Churchill, and World War II Opposition: A Revisionist Autobiography,* 1979). Conversely, the defense analyst Mark M. Lowenthal found serious flaws in Stevenson's volume, among them a tendency toward gross exaggeration ("INTREPID and the History of World War II," *Military Affairs* 41 [April 1977]: 88–90).

In the last two decades, studies have appeared concerning the birth of the Central Intelligence Agency and its predecessor, the Office of Strategic Services (OSS). These works note the ties between "the quiet Canadian" and the flamboyant OSS director William J. Donovan; one is even titled *Wild Bill and Intrepid: Bill Donovan, Bill Stephenson, and the Origins of CIA* (by Thomas F. Troy, 1996). Nicholas John Cull's study of British propaganda (*Selling War: The British Campaign against American*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"Neutrality" in World War II, 1995, reviewed in the Fall 1996 issue of this journal) touches on Stephenson's clandestine work. So too does Francis MacDonnell's book on anti-subversive hysteria (*Insidious Foes: The Axis Fifth Column and the American Home Front,* 1995).

Now, with Thomas E. Mahl's book, we have our fullest account of hidden British operations. Like Cull's and MacDonnell's books, Mahl's study is based on a doctoral dissertation, this one completed in 1994 at Kent State University. Mahl's archival research is extensive. British sources include the records of the Foreign Office, the H. Montgomery Hyde papers, and the manuscripts of the British publicist Eveline Mary Paterson (Lady Cotter). American collections encompass the papers of Franklin D. Roosevelt, William J. Donovan, the columnist Drew Pearson, Ernest Cuneo (ghostwriter for the sensationalist journalist Walter Winchell), and the Federal Bureau of Investigation.

Mahl clearly shows how extensive British operations were and in the process very ably illuminates the complicated network of intelligence groups and leaders. Stephenson and his British Security Coordination (BSC) established operatives in the United States on a massive scale, engaging in "dirty tricks" in order to manipulate the nation into war and, in the process, to destroy isolationism as a respectable intellectual position. Without question, as Mahl shows, the British covertly worked in tandem with such interventionist bodies as the Committee to Defend America by Aiding the Allies, Fight for Freedom, and the Irish-American Defense Association. Similarly, there was hardly an administration move, including the destroyers-for-bases deal and lend-lease, that the British did not secretly promote. They helped spearhead the federal investigation of New York congressman Hamilton Fish, who led the noninterventionists of the House, and possibly committed perjury in the process. They fabricated a "secret German map" that indicated German designs to conquer South America and that was cited by FDR in a speech given in late October 1941. They helped ghostwrite an attack on Standard Oil of New Jersey, which had entered into cartel arrangements with Germany's I. G. Farben.

Certain names stand out. The interventionist columnist Dorothy Thompson frequently met with British intelligence officials. Another columnist, Walter Lippmann, advised the British to initiate surreptitious operations against anti-interventionists. Walter Winchell's scriptwriter, Ernest Cuneo, was fed data by the British operative Sandy Griffith, who also engineered stacked polling at conventions of the American Legion and the Congress of Industrial Organizations. Several *New York Times* correspondents, among them James Reston, were fed material by British intelligence. For the first time, the Rockefellers come to the fore. The family gave the BSC rent-free space in Rockefeller Center and helped subsidize Fight for Freedom. Holding the post of coordinator of inter-American affairs, Nelson Rockefeller aided British intelligence in Latin America.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The book is marred by careless errors. Misspellings abound, including the names of William Dudley Pelley, Allan Nevins, Arthur Hays Sulzberger, Eugene Roseboom, and Henry Morgenthau. Senator J. Bennett Clark is really Bennett Champ Clark. (Worst of all, the first name of this reviewer is misspelled on five separate occasions.)

At times language is sloppy and polemical. Pollster Elmo Roper is a "Henry Luce minion." Dies committee investigator J. B. Matthews, admittedly a volatile figure in the world of ideological combat, is three times referred to as a drunk.

More significant, there is hardly an interventionist group that Mahl does not label a "British interventionist front," basing his claim on a boast of British operations officer Sidney (Bill) Morrell. Similarly, prominent interventionists who cooperated with British operatives are portrayed as their instrument, and Mahl writes without inhibition that the *New York Herald Tribune* was "a tool of British intelligence" (p. 157). Certainly innuendo is clear in a sentence that reads: "[John J.] Pershing's eloquent speech was written for him by Walter Lippmann, who was working with British intelligence and had pressed so hard for [Wendell] Willkie." The British underground officer Richard Ellis might have been influential in the OSS, but one doubts whether he at any time actually ran the agency. Some public opinion polls were manipulated, if in no other way than the framing of the questions, and Mahl shows that some polling agencies had ardently pro-British staffers. It was, however, certainly unlikely that "all" the major published polls were "under the influence of British intelligence, its friends, employees, and agents" (p. 69).

Some contrary facts are not taken into account. If female British agents seduced Senator Arthur H. Vandenberg in hopes of converting him to interventionism, they were not entirely successful, for all during 1941 he continued to speak and vote against FDR's proposals. One could agree with Mahl that Americans were deprived of a genuine choice in the 1940 presidential election, for Republican candidate Willkie was as interventionist as Roosevelt. The GOP standard-bearer, however, was not above pandering to anti-interventionist sentiment, as witnessed by his claim that a Democratic victory would lead to full-scale American belligerency within six months. The Cull study, mentioned earlier, shows that British propaganda efforts were severely weakened by bureaucratic rivalries, thus many efforts were highly ineffective.

Mahl does not does shy away from presenting a conspiratorial view. In fact, he asks,

> How does the historian avoid the charge he is indulging in conspiracy theory when he explores the activities of a thousand people, occupying two floors of Rockefeller Center, in their efforts to involve the United States in a major war? What should we properly call the rigging of a public opinion poll, the planting of a lover, or a fraudulent letter by an intelligence agency in order to gain information or influence policy? (p. xi)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Certainly the British were involved in secret efforts, some of which were worse than shady. Anyone who worries about the health of a democracy cannot but be disturbed when any foreign power surreptitiously plays such a significant role in molding opinion and manipulating policy. At the same time, Mahl is wrong in his implicit assumption that the British played the crucial role in energizing American intervention, that most prominent FDR backers he discusses were little more than British puppets, and that Roosevelt's policies usually lacked the support of his countrymen. Some line of distinction must be drawn between interventionist moves plotted by the British and those fostered by Americans on their own. By his overstatements Mahl mars what could have been a superb study.

JUSTUS D. DOENECKE
New College of the University of South Florida

✦ East and West: China, Power, and the Future of Asia

By Christopher Patten

New York: Times Books/Random House, 1998.
Pp. xiv, 304. $25.00.

Reviewing Chris Patten's book brings me personal pleasure in several respects. For one, it pleases me to encourage readers to buy and read a book that Rupert Murdoch refused to publish. In a highly publicized affair, one of Murdoch's publishing houses pulled out of a contract for this book, shamelessly deferring to Beijing's Communist regime. Given his media ambitions for East Asia, Murdoch clearly dreaded the regime's displeasure at the publication of Patten's thoughtful words. After all, the Chinese government had denounced Patten as "a prostitute for a thousand years" and a "tango dancer" during negotiations over conditions for the return of Hong Kong to China.

In any event, the work in question is a very readable book, full of insights about Asia, written by the last British governor of the prosperous crown colony. Some people have expressed disappointment that the book does not present more kiss-and-tell about Patten's stormy relationship with the Chinese authorities, but that can wait for another day and another book.

I grew to admire Patten from a distance. While living in Europe, I followed his career in the Conservative Party and celebrated his efforts in securing a landslide victory for the Tories in the 1992 British elections. After falling out of favor with the good Queen Maggie, he was ignominiously dispatched to Hong Kong, where he might have given in to tropical torpor and occupied himself in enjoying the luxurious trappings of a colonial administrator. Happily for the people of Hong Kong, he did not do so.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

I was in Hong Kong for the handover ceremonies and noted the dignity with which the entire Patten family conducted themselves. There was a great outpouring of appreciation and support from the local Chinese population. As the Union Jack was lowered for the last time, Chris Patten stood alone and uncovered in a monsoonal downpour before departing with Prince Charles on the royal yacht, *Britannia*. It was a dignified and moving event.

Later, I was in Hong Kong when Patten returned for the first time, to promote his book. I was impressed by how warmly he was received. Local residents of all nationalities queued for hours to shake his hand, give their well wishes, and seek his inscription on their books. One Chinese gentleman who had braved the throng was interviewed on the local television. It turned out that he could neither read nor speak English. But he wanted to have the experience, and he would place his signed copy on his shelf to be joined later by a Chinese translation. Wherever Patten went, he was mobbed by admirers on the streets. Even hard-bitten and cynical journalists gave him a warm and lengthy ovation when he appeared at a press conference at the Foreign Correspondents' Club.

Glancing at the book's index, a keen-eyed reader might suspect that my favorable review has been influenced by Patten's laudatory reference to my own writing on "Asian values" and "Asian democracy" in the wake of my widely publicized dispute with the Singapore government. But Patten's reference is indicative only of his wide-ranging interests in political developments in the region and his concern for individual freedoms. In evidence here is only a congenial meeting of minds.

During his five or so years as governor, Patten underwent a deep transformation that brought his classical liberal instincts to the fore. Although he might not be considered a full-fledged libertarian, his instincts led him to show considerable resolution in support of expanding personal, economic, and political freedoms for the people of Hong Kong. Thus, he passes muster far better than most politicians.

The good governor was also a quick study. The book is peppered with quotes from Asian philosophers and Western observers, each well chosen and to the point. Carefully woven into the text, these references do not appear as mere window dressings.

The book's principal message is that the wide access to individual freedoms and an institutional framework to guarantee them lay behind Hong Kong's success. Patten did his best to ensure that the agreements he forged with the Chinese would allow this oasis of freedom to survive. His efforts earned him the wrath of the Communists and the admiration of most of the people of Hong Kong. He initiated an expansion of democratic institutions that riled the Chinese and caused cynics to describe his efforts as a "poison pill." If democracy is such a wonderful and necessary institution, why, they asked, did the British wait so long to provide it?

Interestingly, although colonial Hong Kong had virtually no democracy until its last days, it had extensive liberalism. Under the British, residents bore little cost by ig-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

noring politics and had little to gain by political activism. Rights and freedoms were secure, so people could focus primarily on earning their daily bread or buying the bakery.

Under Hong Kong's new masters, there is considerable insecurity about whether Beijing will be the same guarantor of rights that Westminster was in colonial days. Little wonder that people in Hong Kong seek more political protections now than they did before. Although Patten deserves some credit for providing them the means to do so, he should not be blamed for their desires.

Casting his net a bit wider, Patten exposes the proponents of "Asian values" as apologists for authoritarian rule. He stresses that it is inappropriate to attach regional adjectives when discussing essentially universal human values and human (individual) rights. Such references only reinforce racial divisiveness and do little to enhance our understanding of how Asia's economies have developed.

Readers not familiar with recent developments in East Asia will find this fascinating book full of relevant insights. It also presents a principled, consistent, and compassionate argument for expanding individual freedoms. Resting his case on both individual and national interests, Patten pleads for "normalizing" relations with China, that is, for treating China the same as any other country. This implies the rejection of arguments that China's exceptional history and culture require it be treated with greater deference. Patten correctly points out that caving in to repressive regimes is a dangerous path.

Unfortunately, Patten does nothing to dispel the enduring myth that Hong Kong is a free-market paradise—as indicated, for example, by the annual Heritage Foundation/Wall Street Journal Economic Freedom Index and by separate surveys by the Fraser Institute and the Cato Institute, which typically identify Hong Kong as the place with the most economic freedom. Consider a few inconvenient facts. In the past year the Hong Kong government intervened in the local stock market in defense of the local currency's peg with the U.S. dollar. Moreover, upon spending $15 billion to purchase shares of local companies, the Hong Kong government became the single largest shareholder in the local market.

Even Hong Kong's own Consumer Council worries about anticompetitive practices. It has identified cross-subsidization, exclusive dealings, price discrimination, resale price maintenance, and price fixing as some of the many abuses of market power. It has also pointed to low levels of competition in supermarket sales and gas supply. Interest rates on bank deposits of less than one week are still set by a banking cartel, as all interest rates were until only a year ago.

Perhaps the worst legacy of the British colonial presence is the land policy. The government owns all unused or undeveloped property, and doles it out in small parcels, keeping prices artificially high. Despite an ongoing recession and sharp falls in asset prices, recent adjustments have not been enough to remove Hong Kong from the top of the list of the most expensive cities in the world. Although this matter lay

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

beyond Patten's brief during his tenure as governor, neither he nor his highly competent civil servants did anything to break up this unique form of corporate welfare.

Happily, the foregoing policy faults have nothing to do with the book under review, which is a welcome change from the self-serving memoirs so often produced by former public officials. In his deftly written book, Chris Patten reveals himself to be a thoughtful human as he brings to life complex ideas and an interesting time and place.

CHRISTOPHER LINGLE
Centre for Independent Studies, Sydney

✦ The Origins and Demise of South African Apartheid: A Public Choice Analysis

By Anton D. Lowenberg and William H. Kaempfer

Ann Arbor: University of Michigan Press, 1998.
Pp. 284. $51.50.

Ten years ago, I wrote *South Africa's War against Capitalism* (New York: Praeger, 1989). Inspiration for the title came from the kind of arguments I heard during my several trips to South Africa, comments made by blacks and their supporters in the struggle against apartheid. The essence of their argument was that apartheid was a by-product of laissez-faire capitalism. For these people, including many academics and politicians, some variant of socialism would provide the cure. My research and counterarguments would have been far more productive and persuasive if I had had the benefit of the insightful analysis set forth in Anton D. Lowenberg and William H. Kaempfer's new book, *The Origins and Demise of South African Apartheid: A Public Choice Analysis.*

Lowenberg and Kaempfer take a public choice approach to the analysis of South Africa's apartheid system. They reject, as did I, the standard argument that apartheid is a unique form of South African capitalism in which industrial, mining, and agricultural entrepreneurs allied themselves with a powerful central government in order to exploit black workers. Such an argument is a variant of the Marxist vision of apartheid as a capitalistic means of exploiting black workers in order to serve the interests of the capitalist class.

Public choice theory treats individual politicians, bureaucrats, voters, interest groups, and other political actors as utility-maximizing agents. These actors are not abstract entities such as the state, society, and social classes. Instead, they are coalitions of individuals who share common goals and seek to promote them through state coercion. These groups spend resources on advertisements, make campaign contributions, and publicly demonstrate in pursuit of government policies that produce excludable, targetable benefits to their members. For their part, politicians, seeking to maximize

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

support, respond entrepreneurially to interest-group pressures by providing the desired public policies through legislation.

The influence of interest groups can shift, as it did in South Africa. During the late 1800s and early 1900s, farmers and mining companies had dominant political influence, but a quarter-century later, skilled and semi-skilled white workers had acquired much more influence. Lowenberg and Kaempfer argue that in the main, apartheid was an endogenous redistributional policy rather than an expression of atavistic, irrational racism.

During South Africa's preindustrial era, in the nineteenth and early twentieth centuries, racial policies were motivated mainly by white employers' desire to secure good land and cheap agricultural and mining labor. South Africa's agricultural and mining industries were constantly plagued by labor shortages. The existence of a viable and flourishing black peasant agricultural sector raised the cost of black labor to white farmers. Farmers sought political instruments to separate blacks from the land and thereby create a pool of cheap black labor. They were later joined by mine owners, who also sought cheap black labor.

The chosen policies combined taxes and direct land confiscation. The imposition of taxes forced blacks into the labor market to work for whites. The establishment of "native reserves" forced blacks off land desired by white farmers. The Land Act (1913) and the Native Trust and Land Act (1936) limited blacks to only 14 percent of the nation's land. In the gold-mining industry, mine owners formed cartels through the Native Labour Regulation Act (1911). The Native Recruiting Corporation, formed in 1912, centralized mining employment for the mining industry and thereby eliminated competitive bidding for black mining labor.

During South Africa's preindustrial period, white farmers and mine owners controlled apartheid policy, but when industrialization began in the 1920s, with white labor based in industrial centers of the Transvaal, Orange Free State, and Natal, white workers captured the state power to create excludable, targeted interest-group benefits. Added momentum arose from what became known as the "poor white" problem, as poor whites migrated in droves from rural to urban areas, where they lived in poverty-stricken, crime-ridden shantytowns and became a significant welfare burden.

Legislation in the 1920s established what became known as the "colour bar." Elaborate mechanisms were set up to prevent mine owners from substituting cheap black labor for more expensive white labor. White semi-skilled and skilled workers persuaded the South African parliament to enact all manner of collusive labor laws, such as rate-for-the-job rules, minimum wage laws, union certification, apprenticeship regulations, and closed-shop rules. Job reservation laws made certain jobs, including many in government, available to whites only. What became known as "civilized labour" policy gave preferential treatment to companies that adhered to employment practices that favored whites. The preferential treatment included im-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

port tariffs to protect firms whose ability to compete internationally was undermined by the high labor costs resulting from the racially discriminatory policies.

Long before South Africa became an international pariah nation, apartheid had come under considerable pressure. Collusive arrangements that benefited white workers but harmed white businesses were challenged. White-owned businesses (and government agencies) contravened apartheid laws. Firms hired blacks in violation of job reservation laws. Blacks lived in white cities despite the prohibitions of the Group Areas Act. In 1922, South Africa experienced its most deadly riot, the Rand Rebellion, which was caused by mine owners' violations of their agreement to limit the number of blacks hired relative to whites. By the time the government put down the riot, between 200 and 250 persons, almost all white, had died, and hundreds more had been wounded. This conflict and other employer–employee conflicts confirm Lowenberg and Kaempfer's argument that apartheid was essentially a redistributionist policy sought by whites to confer particularized benefits. If free markets and voluntary discrimination could have supported white privilege, then it is difficult to explain the necessity for the costly apparatus of apartheid. The mere existence of extensive racial labor regulation signified that white capitalists' interests did not coincide with those of white workers. Lowenberg and Kaempfer provide powerful evidence for the public choice argument that South Africa's apartheid

> was essentially a massive bureaucracy whose raison d'etre was the production of market regulations designed to effect wealth redistribution away from blacks and white mining and industrial capital owners in favor of white workers and agricultural capital owners. These regulations reflected the preferences of the median voter in an electorate dominated by white labor and rural constituencies. (p. 39)

Many people attribute the demise of South Africa's apartheid to international sanctions. Lowenberg and Kaempfer arrive at a different conclusion:

> The white South African Government abdicated power because of a recognition that apartheid policies were becoming too costly to maintain. The main costs associated with apartheid were self-imposed as a consequence of years of misguided development strategies on the part of the National Party government and its predecessors. Although external events such as the oil price shocks of the 1970s and international reaction to apartheid after the Soweto riots of 1976 contributed to the slow growth of the South African economy, even more significant was the fact that the economy had undergone changes which had turned the apartheid system, once an asset for important groups of the white population, into a liability. (p. 218)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Lowenberg and Kaempfer devote several chapters to the sanctions issue. They show that despite claims that the goal of sanctions is to make targeted countries change objectionable domestic policies, sanctions more likely serve the interests of pressure groups within the sanctioning countries. Lowenberg and Kaempfer hypothesize:

> If the primary purpose of sanctions were really to impose maximum economic damage on the target country, then trade embargoes should target commodities with low elasticities of demand and supply, because possibilities for substituting alternative sources or markets are thereby diminished. However, if an important objective of the sanctioning country is to defuse political pressure, or to be seen as "doing something" without using military force and without alienating influential domestic economic interest groups, then commodities with high elasticities of demand and supply should be selected for boycotts so as to minimize the actual terms-of-trade effects of the sanctions and the costs to the sanctioning country. (p. 81)

Therefore, the Lowenberg and Kaempfer hypothesis suggests, for example, that the United States might impose sanctions on the importation of South African wine, textiles, and coal and not to create domestic resistance, because abundant substitutes exist for those goods. Moreover, domestic producers might cynically support embargoes on wine, textiles, and coal imports as a means of gaining monopoly power. The United States embargoed South African agricultural products, but European nations, which were heavy consumers of produce from South Africa in the winter, chose not to embargo that category of goods.

According to Lowenberg and Kaempfer's analysis,

> sanctions are primarily redistributional policies motivated by interest-group pressures within the politics of the sanctioning countries. . . . By treating sanctions as endogenous outcomes of competitive interest-group influences, the public choice approach reveals that economic harm per se is not a critical consideration in determining the nature of the sanctions package implemented by sanctioning countries. (p. 104)

The Origins and Demise of South African Apartheid is yeoman work and makes an important contribution to the analysis of interest-group politics. The authors conclude that the real challenge facing post-apartheid South Africa is to insure that the apartheid state is not replaced by an equally inefficient nonracial Leviathan. But all the evidence that I have seen indicates that the African National

BooksNow To order any book reviewed in this section please call (800) BOOKS-NOW (266-5766) or (801) 261-1187 and ask for extension 1302. Visa, MasterCard, or AMEX accepted. Or visit www.BooksNow.com/independent.htm on the Web.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Congress, now the dominant political force in South Africa, does not differ much from its predecessor, the National Party. As has been too often the case on the African continent, one form of injustice has been eliminated only to be replaced by another that is far worse.

Walter E. Williams
George Mason University

✦ Overcoming Welfare: Expecting More from the Poor and from Ourselves

By James L. Payne

New York: Basic Books, 1998.
Pp. xii, 243. $26.50 cloth.

Overcoming Welfare, the title of James L. Payne's new book, is as provocative as the change he wants America to undergo. The idea of "overcoming" is powerful. For some, "overcoming" evokes images of a Nietzschean desire to invent a higher self. For others, the images of "overcoming" are associated with life's little vices, no less salacious: overeating, drug-inhaling, thumb-sucking, porno-watching, unhealthy dependencies. Payne wants Americans to "overcome" welfare, to get over life's little vices in the service of a higher, virtuous self.

That America has a miserable record after four hundred years of public assistance is hardly the lament of conservatives alone; the idea has broad support among scholars in the field, from Frances Fox Piven to Gertrude Himmelfarb. Payne's optimistic vision is old but admirable. He wants to replace welfare with a more economically productive, democratically participatory, flexible, voluntaristic, and spiritually uplifting alternative. He suggests that the alternative is exemplified in America's past, in the Charity Organization Movement of the late nineteenth century. Unfortunately, however, Payne's scholarship on that period betrays his vision. The book is slave to a naive and utopian behaviorism (pp. 5, 11, 28, 191, 193); it manifests a will to see acts of True Charity and Independence in the briefest of voluntary encounters (pp. 25–26, 194, 199). The book ignores the quantitative evidence (throughout). *Overcoming Welfare* has its share of little vices, too.

In an earlier age, it seems, one had to pay dearly—lose the lungs, the liver, or a youthful skin—to publish just one book on poverty and welfare. James Agee did, that he might honestly convey what he had experienced in *Let Us Now Praise Famous Men* (1939). Michael Harrington did, in his exposition of *The Other America* (1962). Josephine Shaw Lowell did, preparing for her slender book, *Public Relief and Private Charity* (1884). Think of W. E. B. Du Bois, writing from vast firsthand observation *The Philadelphia Negro* (1899), and Gunnar Myrdal, displaying in hair-raising detail the facts of *An American Dilemma* (1944). Think of the volumes of Charles Booth

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and Henry Mayhew on the laboring poor of London. These are big, important books; they still give shape to the scholarship on poverty, charity, race, and welfare. The private hell of an Agee is not something most would take for his own; not for the sake of a book. And it is difficult to imagine a scholar in the Age of Temp-Work making the time of a Charles Booth (who, by the way, kept his day job). What is clear is that the intellectual dividends of those painfully constructed books, Lowell to Harrington, keep raining in.

Nowadays a book on welfare can be produced quickly and at low opportunity cost. The modern book on welfare is pasted with little stories of unchecked desire, fraud, deception, and lives gone wrong. It is sprinkled with sage-sounding advice about America's alternatives to the scrap heap of the welfare state. Agee's advice, if ever he dared to give it, came in poems and thick descriptions, rushing toward us like a tidal wave to the dam of our ordinary senses, bearing gifts of experience worthy of a Blake or a Nietzsche. The new advice skips along in conveniently numbered lists (pp. 40–41), as in Marvin Olasky's "seven marks of compassion," the rhetorical facsimile of *Cosmo's* "seven ways to be in fashion." The contemporary book is Harlequin history for the policy lovelorn: one-dimensional characters, simple and linear plot lines, unintended negative consequences that everyone but the characters of the story can anticipate.

Unfortunately, Payne's *Overcoming Welfare* exemplifies the Harlequin-history style. Readers will be wise to be skeptical of its arguments. But like the other kind of romance, *Overcoming Welfare* will get a certain crowd hooked.

The heart of the book is in the right place: Payne wants America to overcome its impulsive acts of charity, which he claims have had mostly bad effects on productivity and character. (He exaggerates; see R. Moffitt, "Incentive Effects of the U.S. Welfare System: A Review," *Journal of Economic Literature* 30 [March 1992].) Payne wants to scrap almsgiving and revive "expectant giving." I scratch your back and you scratch mine. According to Payne, the middle classes should do more than teach the poor to fish. If you give a fish or if you teach someone to fish, you should demand something back. As Payne puts it, "By this standard, the best aid program is not the one that gives away the most to the needy, but the one that is successful in eliciting the greatest contribution from them" (xii). This idea is of course a good one; the beneficiaries of charity ought to give something back to the world. (What is constantly and systematically stolen from the industrious poor is not the subject of Payne's book.) It's just that Payne's main argument, an attempt at a historically based argument, is so wildly speculative and overstated, so sparingly, misleadingly, and in important ways erroneously documented, that the body of the book floats limp, eyes up.

Payne acknowledges that the "expectant giving" he endorses has deep roots in nineteenth-century Britain and United States. It is the stuff of poor farms and workhouses, industrial schools and "friendly visiting." The chief failure of the book is that Payne locates the successes of expectant giving in the Charity Organization Move-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ment. But instead of drawing on the new scholarship about "charity organization," instead of examining the actual record of practice, instead of listening to the charity organizers near the breakup of their movement, Payne, like Olasky before him, mistakes the history of ideas for the history of outcomes. He confuses the ideals of charity reformers with what actually happened. (For a bibliography of the growing literature, see my "Kicking the Malthusian Vice," *Quarterly Review of Economics and Finance* 37 [Summer 1997].) Although the new social and economic histories are not in agreement about all the consequences of charity organization, one thing is clear: the practices of the nineteenth century offer no panacea for dependence. The nineteenth century offers no scheme for the alleviation of poverty, not while simultaneously waging a war on dependence.

Readers who look for "thick description" will not find it here. Payne's characters are one-dimensional. The recipients of AFDC are portrayed as "dependent," a status that for Payne is something like "useless" (p. 200). (Yet the econometric evidence shows that during the high tide of AFDC only 5 to 10 percent of its recipients could be described as long-term.) Lacking intimacy with the stacks of quantitative evidence, Payne says without doubt or measure: "Increased wealth increases the flow of handouts, which lure the needy into dependent and dysfunctional lifestyles" (p. 11). Social workers are portrayed as being "non-judgmental" (p. 105) about the morals of the poor with whom they work. Payne writes, "Today's social workers have genuinely internalized a value-free approach" (p. 106). (When I was a welfare caseworker in Indianapolis, I was struck by the willingness to judge. Contrary to Payne's assertions, and despite the advice proffered in instruction manuals, social workers judged openly.) Like the dime novels it simulates, *Overcoming Welfare* constructs a fiction of "the volunteer" as "mentor" (p. 19), the opposite of the value-free social worker. This imagined volunteer-mentor is "uplifting" (p. 194), "comforting" (p. 194), and "moral," with "healthy values" for "teaching" the "dependent" (chaps. 11–12). Expectant giving, Payne says in parable, is good for the labor pool, and it trims the fat off selfish giving. As history, however, Payne's story is too kitsch for words.

Payne's one-dimensional characters sit easily with a simple and linear plot line, a literary trick that Payne indulges as he explains "what many sense about government welfare programs: they tend to be harmful giveaway programs. Most nineteenth-century charity theorists noticed the connection and condemned government welfare programs. We could have learned from them had we but listened" (p. 83). The unintended negative consequences of the "giveaway programs" are seen by the author and the reader but not by the relevant actors in the story: we vote-buying politicians, we feel-good philanthropists, we dysfunctional, gift-addicted poor, and we value-free social workers don't see the harm well enough to do anything about it. Not for the last hundred years. The urgent pathos of his rhetoric is appealing; it is the Harlequin hook. But add one more dimension to Payne's characters and the flame of his argument fizzles.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Consider that his heroes of the nineteenth century, the reformer Josephine Shaw Lowell and the economist Edward T. Devine, were by the early twentieth century persuaded that their voluntary charity of the character-building type was no longer suitable for the American economy. Consider that Lowell was a leader in the movement for state welfare bureaucracies, worker safety, and consumers' rights; consider that Lowell and other leaders of the Charity Organization Society (COS) initiated public works projects during the depression of 1893. Consider that in most cities the COS gave "sympathetic" aid. Consider that the idea of "friendly visiting," Octavia Hill's model for what Payne calls a "mentoring" philosophy, was in most cities merely a blueprint. In Indianapolis the Society for Friendly Visitors was so bereft of volunteers and so arrested by the way the poor broke stereotypes that the meetings became coffee klatches for middling housewives. When a "friendly visitor" did make contact with a poor family, the exchanges were too brief for any real mentoring. The modal range of exchange ran from Nurse Ratched to Mr. Bumble; from antiseptic to openly hostile.

In versions, Payne shares a vision with distinguished observers of welfare going back to the first Elizabeth and before. Unfortunately, *Overcoming Welfare* does not use history to improve our understanding of the connection between personal relationships and "moral uplift"; it does not strengthen one's beliefs in the voluntaristic principles of an earlier generation; it does not offer a scheme for the alleviation of poverty; and it writes no redeeming parables for broken community or fragile self-esteem. The ideas of *Overcoming Welfare* are too speculative, the writing too painless, for any of that.

STEPHEN T. ZILIAK
Bowling Green State University

✦ Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776–1970

By Gregory S. Alexander

Chicago: University of Chicago Press, 1997.
Pp 486. $39.95 cloth.

At the outset of his book *Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776–1970,* Gregory S. Alexander defines the goal of the work: "The aim of this book is to correct a widely shared misconception about the historical meaning and role of property in American law" (p. 1). In particular, Alexander wants to debunk the standard view that property law in America is dominated by a vision of "property as commodity" and to establish a long-running and continuing "dialectic" between this view and an alternative view of "property as propriety." If this is his goal, the book fails miserably.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Alexander bemoans that "for too long now, legal scholars, judges, historians, and political theorists have tended to accept uncritically the claim that there has been a single tradition of property throughout American history" (p. 1). This dominant and "mistaken" view understands property as an economic and market commodity that enables individuals to satisfy their "own private agendas and satisfy their own preferences, free from governmental coercion or other forms of external interference. Property, according to this understanding, is the foundation for the categorical separation of the realms of the private and public, individual and collectivity, the market and the polity" (p. 1).

In contrast to this "property as commodity" tradition, Alexander argues for a competing view of property in the American legal tradition that he labels "property as propriety." "The basic argument of this book," he writes, "is that this commodity theory of property is only half right. Property-as-commodity is one-half of a dialectic that American legal writing has continuously expressed from the nation's beginning to the recent past. The other half of the dialectic is a conception . . . that I will call 'property as propriety' " (p. 1). Under the latter view, "property is the material foundation for creating and maintaining the proper social order, the private basis for the public good" (p. 1). And although the understanding of the "public good" has changed over time, all of these "property as propriety" views "share . . . a commitment to the basic idea that the core purpose of property is not to satisfy individual preferences or to increase wealth but to fulfill some prior normative vision of how society and the polity that governs it should be structured" (p. 2).

Indeed, Alexander is so eager to establish the existence of a dialectic between these two visions of property that the word *dialectic* and variations thereof easily appear more than a hundred times in the book. Of course, repeatedly labeling something a "dialectic" does not make it a dialectic. When Alexander is forced to go beyond mere labels, his claim of a dialectic between these two visions of property collapses.

Alexander's book reads like a standard history of property law turned upside down; it is as if the footnotes and text had been reversed. He glorifies obscure, minor, and in many cases simply bizarre theorists of American property law. Conventional wisdom holds that the winners write the history; in this case Alexander not only writes the losers' version of history but argues that they haven't even lost. To understand the thrust of the book, consider that although it contains 386 pages of text and another 82 pages of endnotes, it presents no substantive discussion of the takings clause of the Fifth Amendment, despite (or perhaps because of) that clause's seemingly unambiguous constitutional affirmation of the "property as commodity" view (Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* [Cambridge, Mass.: Harvard University Press, 1985]). John Locke gets only a handful of passing mentions. By contrast, the views of many obscure and long-forgotten theorists receive extended discussion.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In many cases when Alexander actually does discuss major historical figures, his interpretations of their views are incorrect. For instance, Alexander reprises the old story that Thomas Jefferson was actually a "civic republican," rather than a believer in the liberal theory of property (chap. 1). He rejects the contrary opinion of the historian Joyce Appleby ("What Is Still American in Jefferson's Political Philosophy?" in her *Liberalism and Republicanism in the Historical Imagination* [Cambridge, Mass.: Harvard University Press, 1992]) because—you guessed it—she does not think dialectically: "I view Jefferson's writing as consistently preoccupied with the same basic dialectic, a dialectic of stability and dynamism. Professor Appleby's commitment to a linear framework prevents her from seeing it dialectically" (p. 392 n. 12). Subsequent historical research has tended to confirm Appleby's understanding of Jefferson and to cast further doubt on Alexander's characterization of Jefferson as a civic republican (see John Majewski, *A House Dividing: Economic Development in Pennsylvania and Virginia before the Civil War* [New York: Cambridge University Press, 1999]).

Similar confusion marks Alexander's contention that James Madison's endorsement of individual "property rights" in speech and opinions rested on a civic republican view of property (p. 68). As John McGinnis has demonstrated, Alexander's understanding has the analysis completely backward, because Madison "understood freedom of speech as a type of property right inhering in individuals," not as a civic republican concept (John O. McGinnis, "The Once and Future Property-Based Vision of the First Amendment," *University of Chicago Law Review* 63 [Winter 1996]: 49–132; see pp. 64–67).

But Alexander's desperate attempt to expose Jefferson and Madison as closet civic republicans is merely illustrative of his more general attempt to create a vibrant civic republican tradition out of an incoherent mush of multiple, superficially related theories. Indeed, in this unsuccessful project Alexander is scarcely alone: other advocates of republicanism have similarly failed to articulate a coherent tradition or definition of republicanism (see Daniel T. Rodgers, "Republicanism: The Career of a Concept, *Journal of American History* 79, no. 1 [June 1992]: 11–38).

Alexander's definition of republicanism is no more illuminating than his predecessors'; he seemingly equates republicanism with little more than enmity toward the market and favor of greater government power and regulation. Alexander contrasts the private, selfish interests of the market with an idealized, selfless, deliberative process of politics. "The concept of the common weal, moreover, was understood to have substantive meaning," he writes. "The public good was not understood as simply whatever the market produces, for the market was viewed as a realm in which individuals were too vulnerable to the temptation to act out of narrow self-interest rather than, as proprietarian principles required, for the purpose of maintaining the properly ordered society" (p. 2). Alexander is especially indignant toward those who would visualize public regulation of private property through a public choice lens. Reflecting on the regulation of private property in pre-nineteenth-century America, he writes,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> All of this state regulatory activity reflected the proprietarian understanding that certain activities and certain resources should not be left to regulation by the market, for the market could not assure that the proper social order would be maintained. State regulation, moreover, was not understood as a response to particular interests engaging in what economists call "rent seeking,"

but to public-spirited individuals acting for the public good (p. 9).

Alexander's rejection of selfish motives for political action makes it impossible for him to distinguish true civic republican thinkers from those who merely dress naked self-interest in the garb of self-serving civic republican rhetoric. For instance, he claims apologists for slavery for the civic republican tradition, seeing their justification for the ownership of human beings as a sincere attempt to resolve the dialectic of commodity and propriety in American property law. He writes:

> The foundation for this new and unsurpassed social order was slavery, the South's "peculiar institution." More precisely, the foundation was the conception of slaves as a unique form of property. Though they could be used as a commodity, slaves were not primarily valued for that function. Their core function, rather, was to anchor and maintain the stability of the proper and preordained social hierarchy. It was the preservation of that hierarchy, not the production of wealth, that was the vital interest of slaves-as-property system. (p. 215)

Alexander is eager to enlist the apologists for the Southern slave system in his camp: "The theoretical foundation for this hierarchical [slave-based] society was not feudalism, as some have suggested, but civic republicanism" (p. 216).

Republican justifications for slavery simply cannot be taken seriously when compared to economic and public choice explanations. Alexander recognizes that the actual behavior of Southern slave owners bore little resemblance to their self-proclaimed high-minded ideals; Southern slave owners treated slaves like any other economic commodity, buying and selling them for economic gain. He admits, "Virtually without exception, [theorists of slavery as a social system] approved the market-exchange of slaves as a means of creating wealth" (p. 237). In short, the actions of Southern slave owners in treating slaves as commodities belied their contemporaneous verbal rationalizations that slavery was as much a republican social system as an economic system. Having characterized the market as the forum of self-interest and politics as the antidote, however, Alexander is now trapped. Forced to choose between taking the slave owners' self-serving and implausible republican justifications at face value and admitting that their political rhetoric was motivated by the same self-interested impulses that he deplores, he chooses the former.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In the end, Alexander's attempt to construct a dialectic between his two visions of property fails. He has written a book describing the views of some dissenters from the dominant American view of property as commodity. A dialectic requires two evenly balanced and coherent positions. The thinkers described by Alexander are an incoherent grab-bag of minor and uninfluential thinkers of varying quality who do not constitute a coherent philosophical or legal tradition, but rather a desire to justify governmental incursions on liberty and private property rights. Some actually may have been sincere civic republicans; most simply mouthed republican jargon as a cover for private rent-seeking. Few of them added anything valuable to the historical and contemporary debate over property. Send these guys back to the footnotes, where they belong.

TODD J. ZYWICKI
George Mason University School of Law

Guard Your Freedom Jealously!

Because NOTHING is more important.

This is what we believe at The Foundation for Economic Education. Fifty-three years old and going strong, the Foundation remains on the front lines of the battle against big government and the policies that do so much to erode your freedom.

Our mission is promote a love of liberty and an understanding of the benefits of free enterprise among people in this country and around the world.

We are dedicated to bringing this message to high-school and college students, to homeschoolers, to interested adults, to anyone looking for a better way — for a freer, more civil, and more prosperous society today and tomorrow.

How do we meet this important challenge?

Through our monthly magazine we provide readers with intriguing, thought-provoking articles on the history of freedom, current battles to protect and promote liberty, as well as insightful work on market economics and trade. It's the kind of education you won't get anywhere else.

We produce pro-liberty lesson plans for teachers and homeschooling parents. And through our many student programs, adult programs, book sales, and our website (www.fee.org) we tirelessly spread the word of the tremendous advantages of a free and open society, because **nothing** is more important!

To learn more about FEE, check here and receive a sample of our magazine plus our newsletter FEE Today. ☐

Name:_____

Address:_____

City:_____

State:_____ Zip:_____

Return to: The Foundation for Economic Education
30 S. Broadway
Irvington-on-Hudson, NY 10533 800.452.3518

FEE is a 501(c)(3) nonprofit educational foundation that accepts no government money and is supported entirely by the contributions of its donors.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

BLACKWELL Journals

Economic Affairs

Journal of the Institute of Economic Affairs

Edited by Colin Robinson

Economic Affairs is a journal for those interested in the applications of economic principles to practical affairs. It aims to stimulate debate on economic and social problems by asking its authors, while analysing complex issues, to make their analysis and conclusions accessible to a wide audience. Each issue has a theme on which the main articles focus, providing a succinct and up-to-date review of a particular field of applied economics. Additional articles cover topical issues.

Recent topics include:

What Future For the EU? edited by *Professor Colin Robinson*
The Minimum Wage Debate, guest-edited by *Geoffrey Wood*
The Economics of Sport, guest-edited by *Peter Sloane*
Defence Economics, guest-edited by *Keith Harley*
The Pensions Problem, guest-edited by *Philip Booth*
The 'Crisis' in Water, guest edited by *Julian Morris*
Higher Education, guest-edited by *James Tooley*
Road Pricing, guest-edited by *John Hibbs*
Recent developments in macro-economic policy, guest-edited by *Kent Matthews*
Effects of abolition of the Dock Labour Scheme, guest-edited by *Nicholas Finney*

Economic Affairs ISSN 0265-0665 Published in March, June, September and December
Subscription Rates, Vol. 19/1999:
Institutions: Europe £60, N. America $109, Rest of World £66
Personal: Europe £17, N. America $38, Rest of World £23
Schools: Europe £26, N. America $53, Rest of World £32
Students: Europe £15.50, N.America $35, Europe £21

To subscribe to *Economic Affairs* please use the order form on the Blackwell website: http://www.blackwellpublishers.co.uk, send an email to jnlinfo@blackwellpublishers.co.uk, or contact either of the following:

- Blackwell Publishers Journals, PO Box 805, 108 Cowley Road, Oxford OX4 1FH, UK. Tel: +44 (0)1865 244083, fax +44 (0)1865 381381
- Journals Marketing (ECAF), Blackwell Publishers, 350 Main Street, Malden, MA 02148, USA. Tel. +1 (781) 388 8200, fax +1 (781) 388 8210

SPECIAL OFFER for 1999

BLACKWELL Publishers

Electronic access included in the institutional subscription price to the print edition

For more information visit our website

http://www.blackwellpublishers.co.uk

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Etceteras . . .

Escaping Leviathan?

In the terminology made famous by Albert Hirschman, people who are fed up with government have two options: exit and voice. Political scientists and public choice analysts have concentrated heavily on the latter, especially on the use of electoral means of transmitting the citizens' "voice" to the government. Scholars have been slow to appreciate that elections are, and always have been, largely a sham—a mere ceremony intended to make people believe they have some control over their fate even as they are mercilessly bullied, bamboozled, and fleeced by their rulers. But whatever the efficacy of political voice as a means of avoiding oppression by government, scholars have traditionally paid much less attention to the alternative option, exit.

During the past decade, however, a growing number of analysts have begun to repair that neglect. Indeed, increasingly, the argument one hears is not that the voters will elect representatives who will "get government off their backs," but that the people will, as it were, just walk away from oppressive governments, thereby compelling the oppressors to lighten the burdens placed on their remaining subjects. As the information revolution has proceeded apace, especially as the scope and activity of the Internet have expanded, the argument has become not so much about people's physically leaving the jurisdiction as about their electronically withdrawing their (taxable) commercial transactions and financial holdings. The logic, many have assumed, applies equally to any sort of exit.

Montesquieu and Smith's Version

The gist of the argument goes back at least to the time of the Baron de Montesquieu, who, recognizing the ability of the merchants to move their financial capital away from jurisdictions with high confiscatory risks, wrote in *De L'Espris des Lois* (1748) that "only good government brings prosperity [to the prince]" (quoted in Stefan Sinn, "The Taming of Leviathan: Competition among Governments," *Constitutional Political Economy* 3 [Spring–Summer 1992]: 190).

Not long afterward, in *The Wealth of Nations* (New York: Modern Library,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

[1776] 1937), Adam Smith presented a characteristically clear statement:

> The proprietor of stock is properly a citizen of the world, and is not necessarily attached to any particular country. He would be apt to abandon the country in which he was exposed to a vexatious inquisition, in order to be assessed to a burdensome tax, and would remove his stock to some other country where he could either carry on his business, or enjoy his fortune more at his ease. . . . A tax which tended to drive away stock from any particular country, would so far tend to dry up every source of revenue, both *to the sovereign* and to the society. (800; emphasis added)

Like Montesquieu, Smith seems to have believed that at least some rulers would have enough sense to realize that impoverishing their realms was not in their own interest, and therefore would respond to the removal of mobile resources by lightening the burdens they laid on the owners of such resources.

McKenzie and Lee's Version

Among the more notable contributors to the recent resurgence of this venerable argument are Richard B. McKenzie and Dwight R. Lee (*Quicksilver Capital: How the Rapid Movement of Wealth Has Changed the World* [New York: Free Press, 1991]). As the authors summarize their central argument:

> The increased mobility of capital, coupled with the growing economic integration of national economies, has dramatically expanded the scope and intensity of competitive markets. This growth in business competitiveness has necessarily forced governments into a competitive struggle for the world's human and physical capital base. As a consequence, governments have lost much of the monopoly power that undergirded their growth in earlier decades. World governments have had to compete against one another by seeking more efficient policies in order to lure and retain the physical and human capital that is now so crucial to modern production processes and to the tax bases on which governments depend.
>
> In general, governments have been forced to lower tax rates, deregulate industries, and privatize services in order that the productive facilities within their borders can remain competitive on a world scale. Governments at all levels—local, state, and national—have lost the vestiges of unchecked economic sovereignty. (xi)

Although the argument surely has its charms, it has serious shortcomings as well (see Robert Higgs, "Leviathan at Bay?" *Liberty* 5 [November 1991]: 64–70). Most important, it exaggerates the magnitude of the effects of the ostensible competitive pressures.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Seldon's Version

Now, near the end of the 1990s, the argument has surfaced once again, in Arthur Seldon's monograph, *The Dilemma of Democracy: The Political Economics of Over-Government* (London: Institute of Economic Affairs, 1998). In Seldon's view,

> There are enough escapes from over-government for the people to be able to end its long tolerance of over a century" (26). . . . If a North Atlantic Union is not formed the political powers of the nation states of Europe will be escaped by the resort to trading by electronic money, barter or the multiplying new devices that ease the rejection of oppressive national laws and invasive taxes. (98)

Thus, Seldon is sanguine about the prospect for freedom. "The question for the future is increasingly not 'What *should* government do now?' but increasingly 'What *can* government do?' " (26).

Seldon concedes that "national governments, perhaps in league with other governments, will attempt international regulations" to thwart the escape of their victims (97). A plethora of tax treaties and the ongoing international "harmonization" of regulations are examples that come readily to mind. These sorts of international "co-operation" amount to cartelization by which national governments seek to suppress policy competition among themselves, the better to exploit the resident owners of mobile resources (Sinn, "Taming of Leviathan, 188–91; Manfred E. Streit, "Competition among Systems, Harmonization and Integration," *Journal des Economistes et des Etudes Humaines* 8 [June–September 1998]: 249–51). Nonetheless, Seldon expresses confidence that "science and the human spirit will remain two or three decisive steps ahead of the slower-moving machinery of international politics" (97). Well, one can wish.

Big Government on the Ropes?

In all its recent manifestations, this line of argument has contained a large element of wishful thinking. "Before long," writes Seldon, "there will be increasing public understanding that the expansion in the state over the decades was unnecessary" (104). Don't hold your breath. The evidence of the public opinion surveys, for example, suggests that the bulk of the American public is incapable of contemplating life without big government. To be sure, most Americans express agreement with the abstract idea that government is now too big and too intrusive; but ask them about a *specific* government program and they overwhelmingly support it and even its expansion (see, for example, Karlyn Bowman, "At War with Washington?" *American Enterprise,* November–December 1997, p. 93). Europeans, having recently elected socialist governments throughout the Continent, present an even more hopeless case. In Brussels, the Eurocrats build their Tower of Regulatory Babel ever higher.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Even if the public did not clamor for bigger government, the normal operation of contemporary special-interest politics—the only kind of politics that consistently packs a punch nowadays—would ensure that it was foisted on them anyhow. Experience in modern representative democracies shows that once a government program has been instituted, it is well-nigh impossible to root it out, no matter how destructive it is in the aggregate or how unpopular it is with the general public (see Milton Friedman and Rose Friedman, *The Tyranny of the Status Quo* [San Diego: Harcourt Brace Jovanovich, 1984], 41–51).

Skeptics will have no difficulty in raising various objections to the argument that "exit" is taming Leviathan. For an American, the most obvious objection rests on the raw reality of the relentless growth of government. Each year the more than eighty thousand governmental entities in the United States spend vastly more money, take in vastly more tax dollars, and promulgate thousands of new regulations. In these circumstances, it is an odd mentality that imagines the government is struggling to survive. The logic of the argument for the containment of government growth by exit-related forces is sound, but its quantitative sufficiency must be doubted. So far, at least in the United States, the pressures eventuating in the growth of government have manifestly overwhelmed all countervailing forces. Though the future may be different, currently observable trends give us little reason for optimism.

Black Markets

Seldon considers some fascinating data pertaining to illegal market activity, traditionally called "the black market" but dubbed by Seldon "the parallel economy" to remove the implied moral shadow. Drawing on estimates made by the *Economist* and by Friedrich Schneider, Seldon presents data that indicate parallel economies running from a range of 5–10 percent of GDP in Japan, the United States, Austria, and Switzerland, to 10–20 percent in Canada, Britain, France, and Germany, to more than 20 percent in Belgium, Spain, and Italy (Seldon, *Dilemma of Democracy*, 79, 82). Although, by their very nature, such estimates must be viewed as subject to a wide range of error, their orders of magnitude accord, I dare say, with what would seem plausible to an experienced traveler or international business person. (Somewhat different estimates appear the graphs of Simon Johnson, Daniel Kaufmann, and Pablo Zoido-Lobatón, "Regulatory Discretion and the Unofficial Economy," *American Economic Review* 88 [May 1998]: 390–91.)

By including the parallel economy under the rubric of "escapes from over-government," Seldon seems to view the participants in that economy as having successfully "voted with their feet" against the existing regime. The parallel economy, he notes, "produces no taxes on a wide and accelerating range of productive activity" (76). Here, however, he goes too far. It is true that *some* participants in black markets escape taxation, but by no means all do so. The distinction is between escaping the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

payment of *official* taxes, which black marketers do by definition, and escaping the demands of state officials altogether, which some black-market participants do but others do not. Anyone who reads the newspapers will have seen reports of government officials so unfortunate as to have been exposed taking payoffs from the participants in illegal or tax-evasive economic activities. Obviously, for example, in many countries government officials, even at the highest levels, operate in close cooperation with illicit drug traffickers and reap handsome rewards for doing so. The workaday nips taken out of merchants and others by local police and politicians are a staple in many societies—in Mexico, for example, *la mordida* (literally, the bite) is a way of life. Just because those exactions go unrecorded in the official government accounts does not mean that government officials have failed to wrest wealth from the populace. Black markets may be a fine thing, as far as they go, but their operation does not constitute strong evidence of escape from over-government.

Nor does their recent growth in the wealthier countries, which Seldon notes and projects to continue in the future, necessarily signify that governments are suffering from a withering exploitative arm. In general, black markets appear when government prevents people from doing what they prefer to do—for example, when it prevents them from buying a commodity without paying an excise tax or from exchanging a commodity banned by the government or restricted to certain transactors, such as licensed dealers. The more the government intrudes into the marketplace, the greater is the incentive for people to resort to the black market. (In the Heritage Foundation's annual index of economic freedom rankings, the black-market scores are, as a rule, much higher for countries with relatively little overall economic freedom. See also the similar findings reported by Johnson, Kaufmann, and Zoido-Lobatón, "Regulatory Discretion," 388–91.) Therefore, growing participation in black markets may signal only that the government is becoming more oppressive in its taxing and regulating, and thereby creating an incentive for more people to resort to illegal transacting. Possibly, however, as the government becomes more oppressive, it does succeed in catching more victims in its enlarged official web. That some people escape, wholly or partially, does not necessarily indicate that on balance the government has fallen flat in its additional grasping.

A Never-Ending Struggle

As long as governments have existed, some people have been voting with their feet against the established regimes. As economic, ideological, and technological changes have occurred, the balance has shifted many times, sometimes becoming more favorable to the escapees, sometimes more favorable to the regime. Recent increases in the mobility of financial capital and information, resulting from technological advances in information processing and communications, have raised the expectations of many observers that a new age of freedom is about to dawn, that soon governments will be

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

unable to extract rents from their subjects at the old rate, certainly unable to increase the rate of exploitation. But governments are not, as the saying goes, rolling over and playing dead in the face of these developments. Everywhere they are striving to solidify their control over people and resources. Which side will win in the near term remains open to conjecture. But whether the near-term winner turns out to be the oppressor or the oppressed, we can be certain that the struggle will continue.

ROBERT HIGGS

International Atlantic Economic Society

BRIDGING CONTINENTS • FOR 25 YEARS •

✦PUBLICATIONS✦

Leading the economics profession in electronic publishing, the *Atlantic Economic Journal* and *International Advances in Economic Research* are now available in both hard copy and electronic versions. View a Free Sample Issue of the Electronic *AEJ* at: http://www.iaes.org/ journal/aej/dec_98/index.html

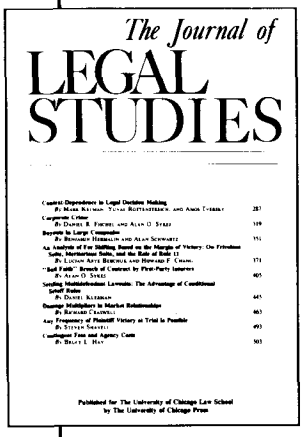
✦FUTURE MEETINGS✦

MONTREAL, CANADA October 7-10, 1999
MUNICH, GERMANY March 14-21, 2000
CHARLESTON, SOUTH CAROLINA October 15-18, 2000

10A Maryland Plaza, St. Louis, MO 63108-1502 U.S.A.
Phone: (314) 454-0100 • Fax: (314) 454-9109
E-mail: iaes@iaes.org • Website: www.iaes.org

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

For incisive research on law, legal institutions, and related issues, look to



The Journal of Legal Studies

Edited by *Eric Posner* and *William M. Landes*

Published semiannually in January and June for The University of Chicago Law School by The University of Chicago Press

Founded in 1972, ***The Journal of Legal Studies*** presents theoretical and empirical research on law and legal institutions. The ***Journal*** emphasizes the use of social science research techniques to gather new information about how legal institutions work and what effects they are likely to have. Because of its broad coverage and range of approaches, ***JLS*** represents a meeting ground for scholars of different disciplines to examine the full impact of legal institutions. Contributors to ***JLS*** include legal scholars, political scientists, economists, historians, and sociologists such as

Lucian Arye Bebchuk
Ronald H. Coase
Henry Hansmann
Alan Schwartz
Gary S. Becker
Robert D. Cooter
Richard A. Posner
Steven Shavell

Regular One-Year Rates: Institutions $45.00, Individuals $30.00, Students $16.00. ***Two-year rates:*** Institutions $81.00, Individuals $54.00. *Outside the USA,* add $5.00 a year for postage. *Canadian residents,* please add $5.00 postage plus 7% GST. Combination subscriptions to ***The Journal of Legal Studies*** and ***The Journal of Legal of Law & Economics*** are also available; please write for more information. MasterCard and Visa accepted. *Credit card customers may fax their orders to 773/753-0811.* To order, send check, purchase order, or complete credit card information (acct. #, exp. date, telephone number, and signature) to the address below.

The University of Chicago Press
Journals Division, Dept. SF9SA, P.O. Box 37005, Chicago, IL 60637
For more information, please visit our website at
http://www.journals.uchicago.edu/JLS/

10/98

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Independent Institute is a non-profit, non-partisan, scholarly research and educational organization that sponsors comprehensive studies on the political economy of critical social and economic problems.

The politicization of decision making in society has largely confined public debate to the narrow reconsideration of existing policies. Given the prevailing influence of partisan interests, little social innovation has occurred. In order to understand both the nature of and possible solutions to major public issues, The Independent Institute's program adheres to the highest standards of independent inquiry and is pursued regardless of prevailing political or social biases and conventions. The resulting studies are widely distributed as books and other publications, and publicly debated through numerous conference and media programs.

Through this uncommon independence, depth, and clarity, the Independent Institute pushes at the frontiers of our knowledge, redefines the debate over public issues, and fosters new and effective directions for government reform.

FOUNDER & PRESIDENT
David J. Theroux

RESEARCH DIRECTOR
Alexander T. Tabarrok

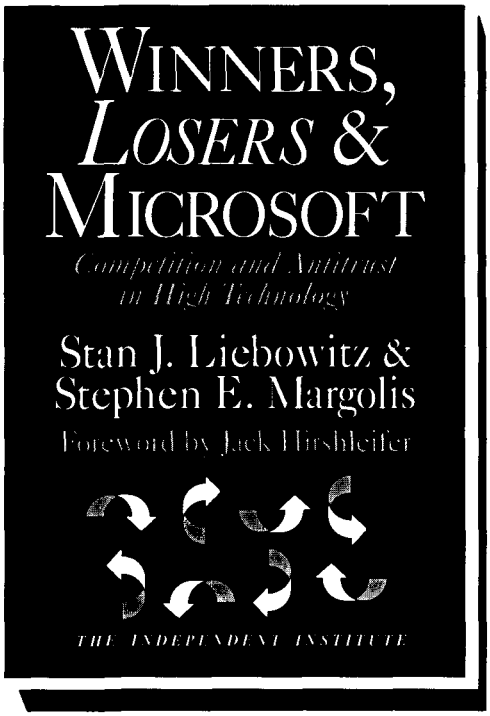
SENIOR FELLOWS
Bruce L. Benson
Robert Higgs
Richard K. Vedder

ACADEMIC ADVISORS
Stephen E. Ambrose
University of New Orleans
Martin Anderson
Hoover Institution
Herman Belz
University of Maryland
Thomas E. Borcherding
Claremont Graduate School
Boudewijn Bouckaert
University of Ghent, Belgium
James M. Buchanan
George Mason University
Allan C. Carlson
Rockford Institute
Robert W. Crandall
Brookings Institution
Arthur A. Ekirch, Jr.
State U. of New York, Albany
Richard A. Epstein
University of Chicago
B. Delworth Gardner
Brigham Young University
George Gilder
Discovery Institute
Nathan Glazer
Harvard University
Ronald Hamowy
University of Alberta
Steve H. Hanke
Johns Hopkins University
Ronald Max Hartwell
Oxford University
H. Robert Heller
Int'l. Payments Institute
Lawrence A. Kudlow
American Skandia Life Assurance Corporation
Deirdre N. McCloskey
University of Iowa
J. Huston McCulloch
Ohio State University
Forrest McDonald
University of Alabama
Merton H. Miller
University of Chicago
Thomas Gale Moore
Hoover Institution
Charles Murray
American Enterprise Institute
William A. Niskanen
Cato Institute
Michael J. Novak, Jr.
American Enterprise Institute
Charles E. Phelps
University of Rochester
Paul Craig Roberts
Inst. for Political Economy
Nathan Rosenberg
Stanford University
Simon Rottenberg
University of Massachusetts
Pascal Salin
University of Paris, France
Arthur Seldon
Inst. of Econ. Affairs, England
William F. Shughart II
University of Mississippi
Joel H. Spring
State University of New York Old Westbury
Richard L. Stroup
Montana State University
Thomas S. Szasz
State U. of New York, Syracuse
Robert D. Tollison
George Mason University
Arnold S. Trebach
American University
Gordon Tullock
University of Arizona
Richard E. Wagner
George Mason University
Sir Alan A. Walters
AIG Trading Corporation
Carolyn L. Weaver
American Enterprise Institute
Walter E. Williams
George Mason University

THE INDEPENDENT INSTITUTE
100 Swan Way, Oakland, CA 94621-1428, U.S.A.
Telephone: 510-632-1366 • Fax 510-568-6040
E-mail: info@independent.org • Website: http://www.independent.org

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Are High Technology Markets at Risk?



Few issues in high technology are as divisive as the debate over competition, innovation, and antitrust. Why do certain products and technologies become dominant while others fail? Will the robust competition and tremendous technological advances of the past two decades continue? Or, will they be suffocated by larger firms employing monopolistic practices? Is antitrust primarily employed against monopolies to increase competition for the benefit of consumers, or is it actually a vehicle that firms use against their rivals to restrict the competitive process?

WINNERS, LOSERS & MICROSOFT is the authoritative and in-depth book on these and other pressing questions. Can markets "lock in" inferior technologies to the exclusion of better ones? Do "network effects" create monopolies? How do antitrust laws affect entrepreneurship and innovation? What about the Internet browser wars and Microsoft Corporation's battle with the U. S. Department of Justice? And much, much more . . .

Timely and lucid, ***WINNERS, LOSERS & MICROSOFT*** provides the essential framework to understand and ensure the future of high-technology markets.

"If only the Clinton Justice Department read **WINNERS, LOSERS & MICROSOFT**, *the American economy would be spared much pain and legal expense. Liebowitz and Margolis really know their stuff, and they can write too."*
— **PAUL A. GIGOT**
Columnist, *The Wall Street Journal*

"Economists too often adopt a clever idea without seriously examining the evidence. **WINNERS, LOSERS & MICROSOFT** *is a very impressive and important antidote to that tendency in the case of 'path dependence.' Liebowitz and Margolis show convincingly that the supposed examples of path dependence are built on a factual house-of-cards. Everyone interested in public policy toward high-technology industries will want to read this excellent book."*
— **SAM PELTZMAN**
Professor of Economics, University of Chicago

"Powerful stuff, **WINNERS, LOSERS & MICROSOFT** *promises to have an important impact on the debate about the use of antitrust in high-technology markets."*
— **WILLIAM F. SHUGHART II**
Professor of Economics, University of Mississippi

"Liebowitz and Margolis' book, **WINNERS, LOSERS & MICROSOFT**, *is instructive for all participants – the judge, defendants, plaintiffs and experts in the DOJ vs. Microsoft tragicomedy. For the rest of us, including Microsoft customers and competitors, it is not too late to learn, as well as be entertained by, the Liebowitz-Margolis explanation and histories of several presumptive 'monopolies' of 'networks' and 'entrenched universal users'."*
— **ARMEN A. ALCHIAN**, Professor of Economics,
University of California, Los Angeles

"In **WINNERS, LOSERS & MICROSOFT**, *Stan Leibowitz and Stephen Margolis dissect an essential issue of freedom: Should we be able to buy what we like, or should some higher government life form sort out the complications of the marketplace and 'rationalize' them for us? This powerful and fascinating book shows with data and logic—not politically correct illogic—that the market, not the government, has been right."*
— **T.J. RODGERS**, Chairman and Chief Executive Officer,
Cypress Semiconductor Corporation

"**WINNERS, LOSERS & MICROSOFT** *is excellent."*
— **OLIVER E. WILLIAMSON**, Professor of Economics
and Law, University of California, Berkeley

57 Figures • 4 Tables • Index • 304 Pages
$29.95 Cloth (California residents: please add sales tax)
Shipping: Add $3 per book (U.S.), $9 per book (foreign)

The INDEPENDENT INSTITUTE

ORDER TOLL FREE 1-800-927-8733
FAX: 510-568-6040
http://www.independent.org

The Independent Institute, Dept. DBX, 100 Swan Way, Oakland, CA 94621-1428

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The INDEPENDENT REVIEW

A Journal of Political Economy

Volume IV ✦ Number 1 ✦ Summer 1999

$7.50 U.S.
$8.50 Canada
ISSN 1086-1653

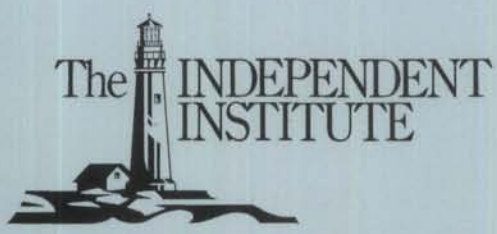
In This Issue . . .

- Liberty and Feminism
  Richard A. Epstein
- After Kyoto: A Global Scramble for Advantage
  Bruce Yandle
- Twenty Years after Humphrey-Hawkins: An Assessment of Fiscal Policy
  Jody Lipford
- The Ways of John Gray: A Libertarian Commentary
  Daniel B. Klein
- Doomsday Every Day: Sustainable Economics, Sustainable Tyranny
  Jacqueline R. Kasun
- On Treating Like Cases Alike
  Anthony de Jasay
- Race Policy in Three American Cities
  Lino A. Graglia

Plus reviews of new books:

Desperate Deception: British Covert Operations in the United States, 1939–1944, by Thomas E. Mahl; *East and West: China, Power, and the Future of Asia*, by Christopher Patten; *The Origins and Demise of South African Apartheid: A Public Choice Analysis*, by Anton D. Lowenberg and William H. Kaempfer; *Overcoming Welfare: Expecting More from the Poor and from Ourselves*, by James L. Payne; *Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776–1970*, by Gregory S. Alexander
Justus D. Doenecke, Christopher Lingle, Walter E. Williams, Stephen T. Ziliak, Todd J. Zywicki

Plus more...



The Independent Institute, 100 Swan Way, Oakland, CA 94621-1428
Phone: 510-632-1366 ✦ FAX: 510-568-6040 ✦ http://www.independent.org

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED